SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 139.

OSCAR M. SPRINGER, PETITIONER,

vs.

ANDERS JAKOBSEN, CLAIMANT OF NORWEGIAN STEAMSHIP "ALBERT DUMOIS," ET AL.

PETITION FOR CERTIORARI FILED SEPTEMBER 20, 1899.
CERTIORARI AND RETURN FILED NOVEMBER 14, 1899.

(16,998.)

No. 272.

ANDERS JAKOBSEN, CLAIMANT OF NORWEGIAN STEAMSHIP "ALBERT DUMOIS," PETITIONER,

vs.

OSCAR M. SPRINGER ET AL.

PETITION FOR CERTIORARI FILED APRIL 24, 1899.
CERTIORARI AND RETURN FILED AUGUST 3, 1899.

(17,380.)

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

(16,998.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 413.

OSCAR M. SPRINGER, PETITIONER,

vs.

ANDERS JAKOBSEN, CLAIMANT OF NORWEGIAN STEAMSHIP "ALBERT DUMOIS," ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THEF FITH CIRCUIT.

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a UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

ANDERS JAKOBSEN, Claimant of Norwegian Steamship Albert Dumois, Appellant,
versus
OSCAR M. SPRINGER ET ALS., Appellees. } No. 13319.

Messrs. Rouse & Grant, proctors for appellant.

Richard De Gray, Esquire, proctor for Oscar M. Springer and Mrs. Marie B. Bourgeois de Blesine, libelants, and Isaac Broadhurst and others, intervening libelants.

Richard Denegre, Blair & Denegre, proctors for Mrs. Genevieve Keplinger Hester, widow, &c., libelant.

Appeal from the district court of the United States for the eastern district of Louisiana to the United States court of appeals for the fifth circuit, returnable within thirty days from the eighth day of February, A. D. 1898, at New Orleans, Louisiana.

Transcript of Appeal.

b UNITED STATES OF AMERICA, *Fifth Judicial Circuit.*

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1897, and held in the court-room of said court, in the city of New Orleans.

Before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit; the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable Charles Swayne, United States district judge for the northern district of Florida.

ANDERS JAKOBSEN, Claimant of Norwegian Steamship Albert Dumois, Appellant,
versus
OSCAR M. SPRINGER ET ALS., Appellees. } No. 687.

OSCAR M. SPRINGER, Appellant,
versus
ANDERS JAKOBSEN, Claimant, ET ALS., Appellees.

Be it remembered, that heretofore, to wit: on the 26th day of January, 1898, a transcript of the record of the above-styled cause from the district court of the United States, for the eastern district of Louisiana, was filed in the office of the clerk of said United States circuit court of appeals in the words and figures following, to wit:

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA.

OSCAR M. SPRINGER

versus

STEAMSHIP "ALBERT DUMOIS."

No. 13,319.

LIBEL.

Filed January 28th, 1897.

In Admiralty.

To the Judge of the District Court of the United States for the Eastern District of Louisiana:

Oscar M. Springer, owner of the Steamer "Argo," hereinafter mentioned, exhibits this his libel against the Steamer Albert Dumois now lying in the port of New Orleans, and within the admiralty jurisdiction of this Honorable Court; her engines, machinery, boats, tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime. And thereupon the said Oscar M. Springer doth allege and articulately propound as follows, to-wit:

First: That the said Steamer Argo is a vessel of 48 tons burthen, one hundred feet long and fifteen and one-half feet beam, and at the time when the cause of action hereinafter mentioned, and set forth, arose, was duly licensed and enrolled for the coasting trade and was employed on the Mississippi River and tributaries.

Second: That on Wednesday, the 27th day of January, 1897, at 7 o'clock P. M. the said Steamer Argo, being tight, staunch, and well manned and equipped, started from the port of New Orleans on a voyage or trip to the Jetties at the mouth of the Mississippi River and return.

Third: That during said voyage, and on the morning of Thursday, January 28th, at 12:40 A. M., while said Steamer Argo was proceeding down said Mississippi River in the middle thereof, and when she had arrived at or near Oyster Bayou, the Master of said Argo noticed a Steamer on the left bank of said river coming up stream, and immediately signalling to him with

one blast of his whistle, signifying that he would pass on the port side of said approaching steamer, to which said approaching steamer, after a while, responded with two blasts of his whistle, and thereupon, the Master of said Argo promptly responded with one blast of his whistle, still claiming his right to pass on the port side of said approaching steamer, whereupon said approaching steamer altered her course and blew three blasts of his whistle, but too late to avoid a collision, the said Argo striking the said Dumois while she was crossing said Argo's bow, about eight feet aft of said Dumois' stem, causing said Argo to fill with water and sink about four minutes thereafter, whereby she was lost carrying down with her two of the passengers on board, and the officers and crew and two other passengers on board with difficulty saving their lives.

Fourth: That at the time of the loss of the aforementioned steamer, libellant was the true and lawful owner thereof, and said steamer was of the value of Forty Thousand Dollars, and that by reason of the careless, negligent, unskillful, and improper management of the said Steamship Albert Dumois and of the collision occasioned by said steamship, the libellant hath sustained damages to the amount of said Forty Thousand Dollars.

Fourth: That all and singular the premises are true and within the admiralty jurisdiction of this Honorable Court.

Wherefore, the libellant prays that process in due form of law may issue against the said Steamship Albert Dumois, her engines boats, tackle, apparel and furniture; and that this Honorable Court will pronounce for the damages aforesaid and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and as the Court is competent to give in the premises.

(Signed) RICHARD DeGRAY,
Proctor.

(Signed) OSCAR M. SPRINGER.

Sworn to and subscribed before me this 28th day of January, 1897.

(Signed) R. H. CARTER,
Deputy Clerk.

Order:

Let admiralty process issue as prayed for.
New Orleans, Jan. 28/97.

(Signed) R. H. CARTER,
Dy. Clerk.

STIPULATION FOR COSTS.

Filed January 29th 1897,

District Court of the United States for the Eastern District of Louisiana.

Whereas a libel was filed in this Court on the twenty-eighth day of January, 1897, by Oscar M. Stringer against the Steamer "Albert Dumois" for the reasons and causes in the said libel mentioned; and praying that process may issue against said Steamer "Albert Dumois," and the said libellant and Lamar C. Quintero, of New Orleans, surety, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant, or his surety, execution may issue against their goods, chattels and lands for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the libellant herein and the stipulator undersigned, shall be and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this Court, or upon appeal by the Appellate Court.

(Signed) OSCAR M. SPRINGER.
(Signed) LAMAR C. QUINTERO.

Taken and acknowledged this 29th day of January, 1897, before me.

(Signed) F. H. MORTIMER,
U. S. Commissioner.

Eastern District of Louisiana, ss:

The above stipulator being duly sworn, deposes and says, that he resides in this city, and that he is worth the sum of two hundred and fifty dollars over and above all his debts and liabilities.

(Signed) LAMAR C. QUINTERO.

Sworn to before me this 29th day of January, 1897.

(Signed) F. H. MORTIMER,
U. S. Commissioner.

ADMIRALTY WARRANT.

Issued January 28th, 1897.

Oscar M. Springer, :
vs. : No. 13,319.
Steamship "Albert Dumois." :

The President of the United States of America.

To the Marshal of the Eatsern District of Louisiana, or to his lawful Deputy—Greeting:

You are hereby commanded to seize and into your possession take the Ss. Albert Dumois, her engines, boats, tackle, apparel and furniture, now libelled by Oscar M. Springer, for the cause set forth in the libel now pending in the District Court of the United States for the Eastern District of Louisiana, that you do cite and admonish the owner or owners, and all and every other person or person having, or pretending to have, any right, title or interest in or to the same, to be and appear before a District Court of the United States, for the District aforesaid, to be holden at the City of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said Ss. Albert Dumois her engines, boats, tackle, apparel and furniture should not be condemned and sold agreeable to the prayer of libellant; and how you have executed this warrant that you make return according to law.

Witness, the Honorable Charles Parlange, Judge of said Court at New Orleans, this 28th day of January, 1897, and the 121st year of the Independance of the United States.

[Seal] (Signed) R. H. CARTER,
Dy. Clerk.

MARSHAL'S RETURN ON WARRANT.

Enetred and Filed Feby. 17th, 1897.

Received by U. S. Marshal, New Orleans, La., January 28/97, and on the same day I seized and took into my possession the Steamship "Albert Dumois," her tackle, apparel, engines, furniture, &c., as she lay in the Miss. River, head of Calliope Street, port of New Orleans, La., and served copy of notice of seizure and writ of monition on L. B. Rustad, Master, whom I found in charge at the time of said seizure, and also placed my keeper in charge.

(Signed) J. V. GUILLOTTE,
U. S. Marshal.
By ALCEE Le BLANC,
Chf. Dy. U. S. Marshal.

INTERVENING LIBEL OF ISAAC BROADHURST, ET AIS.

Filed January 29th, 1897.

Oscar M. Springer, :
vs. : No. 13,319
Steamship "Albert Dumois." :

In Admiralty.

To the Judge of the District Court of the United States for the Eastern District of Louisiana:

Isaac Broadhurst, Robert I. Orkney, Charles A. Desseames, James Brown, Samuel Jewett, Edwin C. Green, late mariners on board the Steamer Argo, exhibit this their libel, against the Steamship Albert Dumois, now in the custody of the Marshal of the District aforesaid, under arrest in virtue of a warrant issued out of this Hon. Court at the suit of Oscar M. Springer, in a cause of collision, civil and maritime; her boats, tackle, apparel and furniture, and against all persons lawfully intervening for their interests therein, in a cause of damages resulting from said collision, civil and maritime. And thereupon the parties aforesaid do allege and articulately propound as follows, to-wit:

First: That at the time of the collision hereinafter named libellants were employed on board of said Steamer Argo in the following capacities, to-wit:

Isaac Broadhurst, Fireman; Robert S. Orkney, Engineer; Charles S. Deseames, Deck Hand; James Brown, Master; Samuel Jewett, Late Deck Hand; Edwin C. Green, Cook.

Second: Libellants have read and fully adopt the allegations contained in the original libel filed herein, as to the collision between said Steamer Argo and said Steamship Albert Dumois, and make them their own, as fully and particularly as if the same were here repeated at length.

Third: That by said collision and the sinking of said Steamer Argo they have each lost all their effects on board of said Argo, and which are fully set forth and described in the schedule hereto annexed and made part hereof, and which in the aggregate amount $319.20, and which is now claimed by them from said Albert Dumois.

Fourth: That all and singular the premises are true.

Wherefore, libellant prays that process of monition may issue to the Marshal of the District aforesaid, commanding him to

cite and admonish all persons having, or pretending to have, any right, title or interest in the said Steamship Albert Dumois, her boats, tackle, apparel and furniture, to appear before this Honorable Court on the .... day of ....., or such other day to be inserted in said monition as the Court shall direct, then and there to answer the libellant in the premises, according to the course of Courts of Admiralty, and the rules and practice of this Hon. Court in civil causes of admiralty and maritime jurisdiction; and that this Honorable Court will pronounce for the libellants aforesaid demand, and decree the same to be paid with costs.

(Signed) ROBERT S. ORKNEY, Eng.
C. A. DESEAMUS,
ISSAC BROADHURST.

Subscribed and sworn before me this 29th January, 1897.
[Seal] (Signed) FRANK H. MORTIMER,
U. S. Commissioner.

SCHEDULE REFERRED TO IN FOREGOING LIBEL.

Goods lost by Isaac Broadhurst:

3 suits underwear	$4.50	
1 suit clothes	10.00	
1 suit clothes	18.00	
6 pair socks	.95	
6 over shirts	6.00	
1 pair shoes	2.00	
		$41.45

Goods lost by R. Orkney:

1 suit clothes	$10.00	
2 overhauls	2.00	
1 pair shoes	1.00	
Monkey wrench	1.50	
S Wrench	1.50	
Gas plyers	1.00	
Gas plyers	1.25	
2 callipus	1.00	
1 hat	1.00	
		$20.25

Goods lost by C. A. Desseamus:		
1 pair shoes	1.50	
1 suit under clothes	1.50	
1 pair flannel socks	.25	
1 white shirt	.75	
		$4.00
		$75.70
Goods lost by James Brown:		
4 suits of clothes	$20.00	
½ doz. white shirts	9.00	
½ doz. under shirts and drawers	25.00	
3 pair shoes	12.00	
1 sextant	50.00	
Marine glasses	20.00	
Instruments and charts and books	6.00	
Valise	6.00	
2 Umbrellas	5.00	
		213.00
Goods lost by Samuel Jewett:		
2 shirts	2.00	
1 suit	10.00	
1 working suit	5.00	
1 pair shoes	3.00	
1 hat (Stinson)	2.50	
1 cap	1.00	
Overhauls	2.00	
		25.50
		314.20
Goods lost by E. C. Green:		
1 pair of shoes	3.50	
1 hat	1.50	
		5.00
		319.20

Isaac Broadhurst, Robert S. Orkney and Charles A. Desseamus being duly sworn, depose and say, that they are, each, poor men, that the allegations set forth in the foregoing libel are true and correct; that they are each poor men, and citizens of the United States, and unable to make deposit or give security for costs.

(Signed) ISAAC BROADHURST.
C. A. DESSEAMUS.
ROBERT S. ORKNEY.

Subscribed and sworn before me this 29th January, 1897.

(Signed) F. H. MORTIMER,
U. S. Commissioner.

ORDER

Let this intervening libel be filed; and considering the affidavit of the interveners as to their poverty and inability to make deposit, or to give security for costs;

It is ordered that they be permitted to file and prosecute this intervention in forma pauperis, under the Act of Congress in case made and provided.

New Orleans January 29, 1897.

(Signed) CHARLES PARLANGE,
Judge.

CLAIM.

Filed February 1st, 1897.

Oscar M. Springer, :
vs. : No. 13,219
Norwegian Steamship Albert Dumois. :

U. S. District Court.

Now comes Ludwig B. Rustad and says that he is Master of the Norwegian Steamship Albert Dumois, seized in the above entitled cause, and as such Master is the lawful bailee and entitled to the possession thereof for Anders Jacobsen, of Christiania, Norway, the lawful owner of said Steamship, and that he is entitled to defend this action in the name of said owner, who is absent from the United States.

(Signed) ROUSE & GRANT,
Proctors.

(Signed) L. B. RUSTAD,
Master.

Ludwig B. Rustad being duly sworn, says, that the foregoing claim, to which his name is subscribed and the statement therein, are true to the best of his knowledge, information and belief.

(Signed) L. B. RUSTAD.

Subscribed and sworn to before me this 1st day of February, 1897.

[Seal] (Signed) FRANK H. MORTIMER,
U. S. Commissioner.

PETITION OF CLAIMANT OF S. S. ALBERT DUMOIS FOR APPRAISEMENT OF VESSEL, &c. AND FOR BENEFIT OF LIMITED LIABILTY ACT.

Filed February 3rd, 1897.

Oscar M. Springer :
vs. : No. 13,219.
Norwegian Steamship Albert Dumois. :

United Sttes District Court, Eastern District of Louisiana.
In Admiralty.

To the Honorable Charles Parlange, Judge of the District Court of the United States for the Eastern District of Louisiana:

The petition of Anders Jabobsen, of Christiana, Norway, owner of the Norwegian Steamship Albert Dumois, seized in the above entitled cause, with respect represents: That on January 28th, at 12:40 o'clock A. M., the said Steamship, while proceeding up the Mississippi River, on her voyage from Port Limon, Costa Rica, to New Orleans, her port of destination, with a cargo of bananas and other merchandise laden aboard, came in collision with the Steamer Argo in said river at a point about eighty miles below said City of New Orleans, in which collision the said steamer Argo was sunk and became wholly lost; and in the same collision H. P. Hester and F. B. de Blesine, passengers on board said Steamer Argo lost their lives; and some of the passengers and crew lost personal effects as hereinafter set forth.

Petitioner further shows that Oscar M. Springer, alleging himself to be owner of said Steamer Argo, filed his certain libel in said cause against the Steamship Albert Dumois, on the 28th day of Januay, 1897, claiming damages against her in the sum of Forty Thousand Dollars for the loss of the said Steamer Argo through said collision; and that a warrant issued the same day upon said libel under which the Marshal seized said Steamship and now has her in custody.

And petitioner further shows that the following persons have filed a libel of intervention against said Steamship in said cause, each claiming the sum set opposite their names for loss of personal property in said collision, viz:

Isaac Broadhurst	$51.45
Robert J. Orkney	20.25
Charles A. Desseames	4.00
James Brown	213.00
Samuel Jewett	25.50
Edwin C. Green	5.00

Petitioner further shows that although said libel and intervening libel charges that the said steamship was in fault in said collision, petitioner does not admit said charge to be true, but reserves the right to contest his liability and that of his said steamship, for any loss, damages or injury that may have been caused by said collision, and to have the full benefit of the limitation of liability provided for in the Act of Congress of March 3rd, 1851, and in Section 4283 of the Revised Statutes of the United States, and the amendments thereof.

Petitioner further avers that said collision happened and the loss and damages occurred without his privity or knowledge.

Petitioner further shows that the freight pending at the time of said collision amounted to thirteen hundred and thirty-three 75-100 dollars, ($1333.75) and he tenders himself ready and willing, and offers to give a stipulation, with good and sufficient security in the value of said steamship and freight, for the payment hereof into Court whenever it shall be ordered for the benefit of said parties who have already appeared and propounded their claims, and of all other persons who may claim damages hereafter, growing out of said collision.

In consideration whereof your petitioner prays that an order may be entered upon this petition directing the appraisement of the value of said Steamship Albert Dumois, and the freight pending at the time of said collision, by competent appraisers to be appointed by the Court, and that he may be permitted to give a stipulation for such value; and that upon filing such stipulation said steamship may be ordered released; that the Court will then direct a monition to issue against all persons claiming damages, loss or injury from said collision, citing them to appear and make due proof of their respective claims within three months, before a Commissioner to be designated for that purpose, and that the Court may give such other directions as to further notice, as to it may seem proper; that the Court make an order restraining the further prosecution of all and any proceeding, suit or suits against petitioner and his said steamship, in respect of any of such claims save in this proceeding: That the payment of the amount of said stipulation, or so much thereof as may be required to meet said claims be decreed to discharge petitioner and his said steamship from further liability for all damage that may be adjudged against him for any loss and injury caused by said collision, and petitioner prays that he may have such other and further relief and orders in the premises as in equity he may be entitled to receive.

(Signed) ROUSE & GRANT,
Proctors for Petitioner.

I. B. Rustad being duly sworn, says, that he is Master of the Steamship Albert Dumois, whose owner is absent from the United States, and that the statements of the foregoing petition are true to the best of his knowledge, information and belief.

(Signed) L. B. RUSTAD.

Sworn to before me this 3rd day of February 1897.

[Seal] (Signed) FRANK H. MORTIMER,
U. S. Commissioner.

ORDER ON FOREGOING PETITION.

Entered February 3rd, 1897.

Let this petition be filed, and let the value of the Steamship Albert Dumois, and of the pending freight at the time of the collision referred to in the foregoing petition, be appraised by Wm. M. Baker and J. A. Turley, before Frank H. Mortimer, U. S. Commissioner and Clerk of the Court, who is authorized to take a stipulation for the amount of the appraised value of said ship and freight, with good surety; to be approved by him; and upon the filing of such approved stipulation, let an order issue directing the Marshal to release said Steamship and deliver her to the Master.

It is further ordered that the further prosecution of any and all suits against said Steamship and her pending freight, and against the owner for damages or injury, on account of said collision, be enjoined and restrained, after said stipulation shall be filed.

New Orleans, La., February 3rd, 1897.

(Signed) CHARLES PARLANGE,
U. S. Judge.

OATH OF APPRAISERS.

Filed February 3rd, 1897.

United States District Court, Eastern District of Louisiana.
FRANK H. MORTIMER,
Clerk.

Clerk's Office, New Orleans, February 3, 1897.

Oscar M. Springer, :
vs. : No. 13,319.
S. S. Albert Dumois. :

We do solemnly swear that we will well and truly value and appraise the Steamship "Albert Dumois," her tackle, apparel, machinery, &c., and the value of her pending freight, as required by the order of Court this day entered in said cause upon the petition of the owner of said steamship and freight. So help me God.

(Signed) W. M. BAKER,
J. K. TURLEY.

Sworn and subscribed before me, this 3rd February, A. D. 1897.

(Signed) FRANK H. MORTIMER,
U. S. Commissioner.

REPORT OF APPRAISERS.

Filed February 3rd, 1897.

Oscar M. Springer, :
vs. : No. 13,319.
S. S. Albert Dumois. :

United States District Court, Eastern District of Louisiana.

We, the undersigned appraisers, duly appointed by the Honorable Chas. Parlange, Judge of the Honorable Court, do value and appraise the ship Albert Dumois, with all her tackle and apparel and machinery in her present condition as she arrived at this port after the collision with the Steamer Argo, at the sum of Thirty Thousand Dollars. And we further value and appraise the pending freight on the voyage which terminated in the City of New Orleans after the said collision at the sum of $1333.73, as per sworn statement.

(Signed) W. M. BAKER,
J. K. TURLEY.
Appraisers.

LIBEL OF MRS. MARIE B. BOURGEOIS DE BLESINE.

Filed February 3rd, 1897.

U. S. District Court.

Mrs. Marie B. Bourgeois de Blesine, :
vs. : No. 13,323.
Anders Jacobson. :

In Admiralty.

To the Judge of the District Court of the United States for the Eastern District of Louisiana:

Mrs. Marie B. Bourgeois de Blesine, of the City of New Orleans, State of Louisiana, exhibits this, her libel, against Anders Jakobsen, of Christiana, Norway, owner of the Steamship Albert Dumois, at the time of the collision hereinafter stated, in a cause of damages, resulting from said collision, civil and maritime. And thereupon said Marie B. Bourgeois de Blesine doth allege and articulately propound as follows:

First: That she is the mother of the late Faure Bourgenois de Blesine, who departed this life on or about Thursday, January 28th, 1897, as hereinafter stated, unmarried, and without children, and leaving him surviving, only your libellant.

Second: That on the 27th day of January, 1897, the Steamer Argo, being then in the port of New Orleans, and being staunch, strong and properly manned and equipped, at about the hour of 7 P. M. started on a voyage or trip from the City of New Orleans to the Jetties at the mouth of the Mississippi River and back to said city, with said Faurie Bourgenois de Blesine on board thereof as one of her passengers.

Third: That while said Argo was proceeding down said river on said trip, and when she had arrived near a place on said river called Oyster Bayou, ... Canal, it being then shortly after midnight, the said Argo being then in the middle of the river passing down in the current thereof, the master of said Argo, who was a duly licensed and qualified pilot, was at the wheel, and noticed over his port bow a steamer ascending said river on the left bank thereof and more than a mile distant, and waited for her to signal, but finding that she did not do so, he blew one blast of his whistle signifying he would keep his course and pass to starboard, or on his right of said steamer so ascending on the left bank of said river that said ascending steamer came on without a reply for a time, and then blew two blasts of her whistle—crossing the signals from said Argo—to which the Master of said Argo, being the descending steamer, having the least control of herself and having the right of way, immediately replied with one blast of his whistle signifying that he would pass on his right of said ascending steamer and put his helm hard a port to go wide of said ascending steamer, that at the time, or immediately after the crossing of said Argo's signal by said ascending steamer, she changed her course, swung across the river with great rapidity crossing in the direction in which said Argo was proceeding, and when she had arrived within about one or two hundred feet of said Argo, she then blew her danger

signals of three blasts of her whistle, but continued right on her course in utter disregard of all the signals ofsaid Argo until said Argo struck her on her starboard bow about eight feet aft of her stem, whereby said Argo's bow was mashed in and she sank out of sight to the bottom of said right [river] in a few minutes thereafter, and shortly after said sinking it was discovered that said steamer was the Albert Dumois owned by the said Andreas Jackson.

Fourth: That said Argo was a very fast vessel, and when descending said river in the middle thereof and observing said ascending steamer on the left bank thereof, was making fully 18 miles per hour, and the courses on which said steamers were proceeding were fully half a mile apart and there was not slightest danger of a collision had said ascending steamer kept her course as she was bound to do and as the master of Argo believed, and had a right to believe she would do until said ascending steamer crossed the signals of said Argo as aforesaid, when owing to the speed with which the latter was proceeding, and the fact hat she was built for speeding forward and not backward, and could not be backed until her wheel—which was making 200 revolutions per minute—had stopped and her engine reversed, when her ability to back against the strong current then running in the river was very slight (all of which was well known to the Master of said Argo, said Master's judgment at the time of the crossing his signals as aforesaid, was, that it was best for him to continue his speed to get the better control of his vessel, port his helm and pass wide to the right of said ascending steamer, but which owing to the speed of said ascending steamer, which had not been stopped, he failed to do, but struck her on her port bow as aforesaid.

Fifth: That the management of said ascending steamer in not blowing the first signal, and in crossing the signals of said Argo, and from the time she left the left bank of said river to the time she was struck by said Argo was in all things unskillful and wrong, and solely caused the sinking and loss of said Argo.

Sixth: That in and by sinking of said Argo, caused by the carelessness, negligence and improper conduct of the officers in command of said ascending steamer, said Faure Bourgeois de Blesine was lost and drowned, and from the time of said collision to the time of said drowning said de Blesine endured great fear, shock, pains and anguish of death, for which no adequate compensation could be made in money, but for which libellant as surviving mother now claims $10,000.

Seventh: That said Faurie Bourgenois de Blesine was only 24 years of age, strong and healthy, and the only support of libellant, his widowed mother, and that by reason of his afore-

said death she has been suddenly deprived of his companionship, affection and support to her great damage, in the further sum of $10,000.

Eighth: That all and singular the premises are true.

Wherefore the libellant prays that a warrant in due form of law may issue to the marshal of the district aforesaid, commanding him to arrest the said Anders Jacobson, and have him forthcoming before this Hon. Court, on the .. day of ....., or such other day to be inserted in said warrant as the Court shall direct, then and there to answer libellant in the premises; and further commanding the aforesaid marshal, in the said Anders Jackson shall not be found within the district aforesaid, to attach the goods and chattels, and for want thereof, the credits and effects of the said Anders Jackson, according to the course of courts of admiralty, and the rules and practice of this Honorable Court in civil causes of admiralty and maritime jurisdiction; and this Honorable Court will pronounce for the libellants aforesaid demand against the said Anders Jakobson, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain and as the Court is competent to give in the premises.

(Signed) MARIE B. BOURGEOIS De BLESINE.

Subscribed and sworn before me this 3rd day of February, 1897.

[Seal] (Signed) R. H. CARTER,
Dy. Clk.

(Signed) RICHARD De GRAY,
A. M. AUCOIN,
Proctors.

Affidavit.

Marie B. Bourgenois de Blesine being duly sworn deposes and says. that she is a citizen of the United States; that all the matters and things set forth in the foregoing libel are true and correct according to her best information and belief; that she is a poor person and unable to give security or make deposit for costs in the above case.

(Signed) MARIE B. BOURGEOIS de BLESINE.

Sworn to and subscribed before me this 3rd day of February, 1897.

(Signed) R. H. CARTER,
Dy. Clk.

[Seal]

Considering the affidavit of the libellant as to her poverty

and inability to make deposit or furnish security for costs, it is ordered that she be permitted to institute and prosecute this cause in forma pauperis, in accordance with the Act of Congress in such case made and provided.

New Orleans, February 4th, 1897.

(Signed) CHARLES PARLANGE,
Judge.

MOTION AND ORDER TO CONSOLIDATE CAUSE NO. 13,323 WITH NO. 13,319.

Extract from the Minutes of the Court.

February Term, 1897.

New Orleans, Friday, May 7th, 1897.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, Judge.

Mrs. Marie de Blesine	:	
vs.	:	No. 13,323.
Anders Jakobson.	:	

On motion of R. De Gray, proctor for libellant, the agreement and consent considered, which is on file in suit No. 13,319 on the docket of this Honorable Court, entitled, Oscar M. Springer;

It is ordered that this suit be consolidated with and filed in said suit No. 13,319.

AGREEMENT TO CONSOLIDATE.

Filed May 7th, 1897.

Oscar M. Springer,	:	
vs.	:	No. 13,319
Steamship Albert Dumois.	:	

It is agreed that the libel of Mrs. de Blesine against Anders Jakobson, No. 13,323 on the docket of this Honorable Court, shall be consolidated with and filed in the cause, and shall stand and be treated as a petition filed herein by said Mrs. de Blesine against the stipulation given for the release of said steamship under the proceedings for limited liability filed herein by said

Anders Jakobson and an answer to the petition for limited liability filed by claimant.

New Orleans, May 7th, 1897.

(Signed) RICHARD De GRAY,
Proctor for Mrs. De Blesine.

(Signed) ROUSE & GRANT,
For Claimant.

STIPULATION FOR RELEASE OF SS. ALBERT DUMOIS.

Filed February 4th, 1897.

Oscar M. Springer, :
vs. : No. 13,319
Steamship "Albert Dumois." :

District Court of the United States for the Eastern District of Louisiana.

Whereas, a libel was filed on the Twenty-eighth day of January, 1897, by Oscar M. Springer against the Steamship "Albert Dumois," her tackle, apparel, furniture, machinery, etc., for the reasons and causes in said libel mentioned; said libel being numbered 13,319 of the docket of this Court; and

Whereas, an intervening libel was filed in said cause on the Twenty-ninth day of January, 1897, by Isaac Broadhurst and others against said Steamship for the reasons and causes in said intervening libel set forth; and

Whereas, a libel was filed on the Third day of February, 1897, by Mrs. Marie B. Bourgeois de Blesine against Anders Jakobsen, the owner of said Steamship, for the reasons and causes in said libel set forth; said libel being numbered 13,323 of the docket of this Court; and

Whereas, said vessel is now in the custody of the Marshal of this district under process issued in accordance with the prayer of said libel first above mentioned; and

Whereas, a claim to said vessel has been filed by Ludwig B. Rustad, master of said vessel and lawful bailee thereof for the owner, Anders Jakobsen, of Christiana, Norway; and

Whereas, a petition was filed in said cause on the Third day of February, 1897, on behalf of said owner Anders Jakobsen, claiming the benefit of the limitation of liability provided for in the Act of Congress of March 3rd, 1851, and in Section 4283 of the Revised Statutes of the United States, and the amend-

ments thereof; and praying for an order directing the appraisement of the value of said Steamship "Albert Dumois," and the freight pending at the time of the cause of action in said libels mentioned; and

Whereas, the value of said Steamship has been duly fixed at the sum of Thirty Thousand Dollars ($30,000.00), and the pending freight at the sum of Thirteen hundred and thirty-three 75/100 Dollars ($1333.75), as appears from the report of the appraisers now on file in this Court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimant, or his surety, execution to the amount of Thirty-two thousand, five hundred Dollars ($32,500.00) may issue against their goods, chattels and lands;

Now, therefore, the condition of this Stipulation is such that if the Claimant herein and Isidore Newman, Senior, of New Orleans, Louisiana, the stipulator undersigned, shall abide by all orders of the Court, interlocutory or final, and pay the amount awarded by the final decree rendered by this Court, or by any Appellate Court, if an appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

And it is further expressly stipulated and agreed by the claimant herein and the surety hereto, that this Stipulation is conditioned and shall be responsive for the payment of any order or decree which may be rendered by this Court, or by any appellate court, in favor of any and all persons who have already, or may hereafter, intervene in this cause, in accordance with the monition issued upon the petition of said claimant to be permitted to give this stipulation.

Signed, Sealed and Delivered in the presence of (Signed) FRANK H. MORTIMER, United States Commissioner.

(Signed) ANDERS JAKOBSEN, By L. B. Rustad, Master of S/S Albert Dumois.

(Signed) ISIDORE NEWMAN, Sr.

Affidavit.

Isidore Newman, Sr., being duly sworn, deposes and says that he resides in the City of New Orleans, Louisiana, and is worth the sum of Thirty-two thousand, five hundred Dollars ($32,500), over and above all his debts and liabilities.

(Signed) ISIDORE NEWMAN, Sr.

Subscribed and sworn to before me this 4th day of February, 1897.

(Signed) FRANK H. MORTIMER, U. S. Commissioner.

Indosement on Stipulation.

Security approved, under order of Court of Febry, 3/1897, on petition of claimant for appraisement, &c.
New Orleans, February 4, 1897.
(Signed) FRANK H. MORTIMER,
U. S. Commissioner.

WRIT OF RELEASE.

Issued February 4th, 1897.

United States District Court, Eastern District of Louisiana.

Clerk's Office, New Orleans, February 4/1897.

Oscar M. Springer :
vs. : No. 13,319.
Steamship "Albert Dumois." :

The President of the United States of America,

To the Marshal of the District of Louisiana, or his Lawful Deputy—Greeting:

Whereas, L. B. Rustad, Master of said Steamship "Albert Dumois," hath filed a claim thereto, on behalf of Anders Jakobsen, of Christiana, Norway, and furnished stipulation, with good security, under order of Court of February 3rd, 1897, and which said claim is now of record in this office.

You are hereby authorized to release the said Steamship "Albert Dumois" from seizure, and her to restore to the possession and custody of said claimant, he having given bond, conditioned as required by law and by said order of Court, and otherwise complied with the rules of the Court, &c., and make return hereon of the doings in the premises.

Witness the Honorable Charles Parlange, Judge of said Court at New Orleans, this 4 day of February, 1897, and the 121 year of the independence of the United States.

[Seal] (Signed) FRANK H. MORTIMER,
Clerk.

MARSHAL'S RETURN ON WRIT.

Entered and Filed Feby. 17, 1897.

Received by U. S. Marshal, New Orleans, La., February

4/97, and on the same day I released the within named Steamship Albert Dumois, her tackle, boats, engines, apparel and furniture, &c., to Captain L. B. Rustad, the claimant.

(Signed) J. V. GUILLOTTE,
U. S. Marshal.
By ALCEE Le BLANC,

MOTION AND ORDER FOR MONITION AND RESTRAINING ORDER.

Filed and Entered Feby. 6, 1897.

United States District Court, Eastern District of Louisiana.

Oscar M. Springer	:	
vs.	:	No. 13,319.
Norwegian Steamship Albert Dumois.	:	

The Norwegian Steamship, Albert Dumois, her engines, boilers, tackle, apparel and furniture, having been heretofore libelled in said cause to answer for the alleged loss of the steamer Argo, and the effects of certain of her crew who have intervened, in a collision between said steamer Argo and the said Steamship Albert Dumois on the morning of January 28th, 1897, in the Mississippi River, about eighty miles below the City of New Orleans, and an action in person in having also been commenced against Anders Jakobsen, owner of said Steamship, in this court by Mrs. Marie B. Bourgeois de Blesine, the mother of Faure Bourgeois de Blesine, No. 13,323, to recover Twenty thousand dollars damages in consequence of said colsion, and it appearing that other suits may be brought against said Steamship and her owner for losses and injury occasioned by said collision: and the said Anders Jakobsen, owner of said Steamship, having filed his petition in the above entitled cause, claiming the benefit of the limitation of liability provded for in the Revised Statutes of the United States, and the Acts amendatory thereof, making the necessary averments and praying for appropriate relief in that behalf; and also contesting all liability for said collision; and this Court having, at the election of said Anders Jakobsen, entered an order permitting him to give a stipulation for the value of said steamship and her pending freight; and the said vessel and pending freight having been duly appraised, and such stipulation having been given and accepted as in said order provided;

Now, on motion of Rouse and Grant, proctors for the said

Anders Jakobsen, it is ordered that a monition issue out of under the seal of this Court against all persons claiming damgaes for any and all loss, damage and injury caused by, or resulting from, the collision aforesaid, citing them to appear before this Honorable Court and answer said petition, and make due proof of their respective claims, on or before the Tenth day of May, A. D. 1897, at 11 o'clock, before Frank H. Mortimer, Esq., who is hereby appointed Commissioner before whom proof of all claims, in pursuance of said Monition, shall be made.

It is further ordered that notice of such Monition be given by publication thereof in the New Orleans Picayune, a newspaper published in the City of New Orleans, once a week for a period of three months, the first publication to be made at least three months before the return day; and that a copy of said Monition be served on the Proctors of all parties who, at the date of making this order, have filed libels, or commenced actions for damages, loss or injury arising out of said collision.

It is further ordered that the further prosecution of the aforesaid libel by Mrs. Marie B. Bourgeois de Blesine in this Court against said Anders Jakobsen, and the prosecution of any and all other libels, suits, actions or proceedings of any nature or description, that may be brought against the said Steamship Albert Dumois, and Anders Jakobsen, her owner, in respect to any of the claims aforesaid, be and the same are hereby restrained until the hearing and determination of these proceedings.

It is further ordered that the service of this order as a restraining order be made by delivering a certified copy of this order to the persons to be restrained, or their attorneys.

New Orleans, La., Febuary 6, 1897.

(Signed) CHARLES PARLANGE,
U. S. Judge.

MARSHAL'S RETURN ON FOREGOING.

Entered and Filed Feb. 17, 1897.

Received by U. S. Marshal, New Orleans, La., Feb. 8/97, and on the 9th day of February, 1897, I served a true copy of the within motion and order on Richd. De Gray, attorney of record, by handing the same to him in person in the City of New Orleans.

(Signed) J. V. GUILLOTTE,
U. S. Marshal.
By JOHN EARLY.

ANSWER OF CLAIMANT TO LIBEL AND INTERVENTION OF CREW OF STR. ARGO.

Filed March 9th, 1897.

United States District Court, Eastern District of Louisiana.

Oscar M. Springer :
vs. : No. 13,139
Steamship Albert Dumois. :

To the Honorable the Judge of the United States District Court for the Eastern District of Louisiana:

Now comes Anders Jakobsen, who has hereto filed his claim in this case as owner of the Steamship Albert Dumois, and for answer unto the libel of Oscar M. Springer, and the libel of intervention of Isaac Broadhurst, Robert J. Orkney, James Brown, Samuel Jewett and Edwin C. Green filed herein against said Steamship, doth allege and propound as follows:

First: That he is ignorant of the dimensionse and burden of the Steamer Argo, or whether she was duly licensed, or enrolled in the coastwise trade and employed as alleged in the first article of said libel, and therefore cannot admit the truth thereof, but will require these averments to be proved, so far as the same are, or may be material to the libellant's case.

Second: Respondent admits that on Wednesday, January 27th, 1897, the said Steamer Argo started from the City of New Orleans on a trip to the Jetties at the mouth of the Mississippi River, but he denies that she was tight, staunch, well manned and equipped, as alleged in the second article of said libel.

Third: Respondent admits that the said Steamer Argo, on the morning of January 28th, 1897, while proceeding down the Mississippi River, came in collision with the Steamship Albert Dumois, which was coming up the river close to the east bank, but he denies that said collision was caused by the fault of said steamship, her pilot, master, officers, or crew, as alleged in the third article of said libel; but avers, on the contrary, that said collision was caused solely by and through the fault of said steamer Argo, her pilot, master and others then navigating her; the truth being, that when the lights of said steamer were first seen by the pilot, officers and look-out of the steamship, and before the steamer Argo had sounded any whistle, the said steamship gave, as a signal to said steamer, two clear and distinct blasts of her steam whistle, sufficiently loud to be heard at the distance of a mile or more, indicating that she wished to pass the steamer to the left starboard to starboard, and put her helm

to starboard, which signal said steamer wrongfully crossed and answered by one blast of her whistle. Believing that said signal had not been heard, or if heard, had been misunderstood by the approaching steamer, the pilot of said steamship caused her signal of two whistles to be immediately repeated, but not being answered, said pilot, at once, caused the danger signal to be given, stopped the engines of the steamship, and backed her at full speed, so that her headway was fully checked. But the said steamer Argo wrongfully irnoring and not responding to said danger signal, kept advancing full speed, and crossed the course of said steamship until she struck her on the starboard side about midway, between the stem and the forerigging. Before and at this time, said steamer was coming down the river, close to the east bank and out of the proper and ordinary course of descending vessels, at a speed of 18 miles an hour, which under the circumstances, was excessive and extremely dangerous, and her sudden and unexpected appearance at a distance of less than half a mile above her, put the steamship Dumois in a position of extreme danger, so that her pilot was compelled to take instant action to avoid a collision, and in consequence, put her helm to starboard for the purpose of getting out of the way, as said steamer was coming directly toward the steamship, without making any effort to check her speed, or to prevent a collision. And respondent avers, that a collision would not have occurred if the said steamer had followed the proper and customary course on the west side of the river, usually taken by descending vessels, and had been navigated at a moderate rate of speed, such as ordinary prudence required on a dark night. Nor would a collision have occurred under the special circumstances of this case, if she had properly answered the signals of the steamship, or had reversed her engines and checked her speed, whn the danger signals were given. And so Respondent avers, that said collision was caused solely by reckless conduct of those in charge of the navigation of said steamer, unmixed with any fault on the part of said steamship, her pilot, officers and crew.

Respondent further shows, that the steamer Argo at the time of, and prior to said collision, had not sufficient force on deck to navigate her safely, the master, owing to an insufficient complement of crew, being compelled to act as pilot, mate, lookout and helmsman, and was incapacitated to give proper attention to the navigation of the vessel.

Respondent further shows, that before, and at the time of said collision, said Steamship Dumois was fully manned, officered and equipped, with all the lights required by law in proper position and burning brightly, as required by the rules of navigation, with sufficient lookouts properly stationed, and the vessel

under full control and management by her pilot, officers and crew, who were skilled in their profession.

Fourth: To the fourth article of said libel, Respondent says, that he does not know, whether said Steamer Argo was owned by libellant, or not, at the date of said collision, and he requires strict proof of the averments in this respect, and he specially denies that said steamer was of the value of Forty Thousand Dollars ($40,000), and that libellant and interveners have suffered loss to the amount claimed by them respectively, and requires strict proof to be made in respect to said damages; and he again denies that the loss of said steamer was caused by any carelessness, neglect, unskilful, or imprudent management of the Steamship Albert Dumois, as alleged.

Fifth: Respondent for answer to the fifth article of said libel, admits that this Court has jurisdiction in the premises, but denies the truth of the allegations of said libel, except as hereinbefore admitted.

Sixth: Respondent further shows, that said Steamship Dumois suffered damages by reason of said collision, in her hull, to the extent of about Two thousand five hundred dollars.

Seventh: And further answering said libel and intervening libels, Respondent avers that the value of said Steamship Albert Dumois, upon her arrival in the port of New Orleans, the port to which she was destined, when said collision occurred, and her then pending freight, was appraised in this proceeding and valued at the sum of $31,133.75, and that he has given a stipulation for such value, in the sum of $32,500 to cover such value and costs, which has been accepted and filed in the office of the Clerk, and that said steamship and pending freight have been released upon said stipulation.

Respondnet further shows, that he has filed a petition in this case, claiming the benefit of the limitation of liability granted by the laws of the United States in cases of this character, and he avers that said collision occurred without his privity, or knowledge, and he now claims the full benefit of said laws in this answer, and prays that any recovery that may be had, by libellant, and the interveners herein, or any other person who may intervene, or who shall make claim for damages on account of said collision, may be limited in the aggregate to the appraised value of said steamship, and her then pending freight, for which said stipulation has been given; and that in case the damages are divided between the said steamship Dumois and the owner of the said Steamer Argo, that respondent may be allowed his said damages as an offset.

Now, having fully answered said libel, respondent prays, that

said libel and all interventions in this cause may be dismissed, and that the Court will give such further relief as the nature of the case may require.

(Signed) ROUSE & GRANT,
Proctors for Claimant.

Ludwig B. Rustad being duly sworn, says, that he was and is Master of the Steamship Albert Dumois, the owner whereof is absent from the United States, and that the statements contained in the foregoing answer are true to the best of his knowledge, information and belief.

(Signed) L. B. RUSTAD,

Sworn to and subscribed before me this 8th March, 1897.

(Signed) H. G. DUPRE,
Not. Pub.

AMENDED PETITION FOR LIMITED LIABILITY.

Filed April 28th, 1897.

Oscar M. Springer :
vs. : No. 13,319.
Norwegian Steamship Albert Dumois. :

United States District Court.

United States District Court, Eastern District of Louisiana.

To the Honorable Charles Parlange, Judge of the District Court of the United States for the Eastern District of Louisiana:

The amended petition of Anders Jakobsen, who is and at the time hereinafter mentioned, was sole owner of the Norwegian Steamship Albert Dumois, libelled and seized in the above entitled cause, with respect represents:

1st. That on the 28th day of January, 1897, at about 12:30 o'clock A. M., the said steamship, while proceeding up the Mississippi River on a voyage from Port Lima, Costa Rica, to the city and port of New Orleans, in the State of Louisiana, came in collesion with the Steamer Argo, a sea-going yacht, or vessel, of about forty-five tons burden.

2nd. That said steamship at the time of leaving Port Limon, Costa Rica, and at the time of said collision, was properly manned and equipped, and had a full complement of officers and seamen aboard, and was in all respects staunch and seaworthy.

3rd. That said steamship arrived at about the hour above

mentioned, at a point in the Mississippi River, eighty miles below the city of New Orleans, and was proceeding up the river, as close to the east bank as it was safe for her to do, at the moderate speed of about nine miles an hour, when her lookout, pilot and second mate, discovered the lights of a steamer coming down the river close to the east bank, nearly "head and head," but somewhat on the starboard of the steamship. A competent seaman was at the wheel of the steamship and another was properly stationed forward as a lookout; and a pilot of experience and skill, together with the second mate, likewise competent, were also on the bridge keeping a vigilant lookout. The white mast-head, and red and green side lights of the steamship, set and properly screened, were burning brightly, so as to be clearly seen at the distance required by law. Immediately upon discovering the lights of the said approaching steamer, (which subsequently proved to be the Argo, bound form the city of New Orleans, to the Jetties at the mouth of the river), the steamship, before any signal had been given by the steamer, gave two clear and distinct blasts of her steam whistle, indicating that she desired to pass the Argo to the left, starboard to starboard, at the same time her wheel was put to starboard. In answer, the Argo wrongfully crossed this signal with one blast of her whistle. Thereupon, the pilot of the said steamship, fearing that the Argo has misunderstood his signal, immediately repeated it, and at once caused three, or more, short blasts of her steam whistle, to be given in quick succession, to indicate danger, and at the same time caused her engines to be stopped and backed. But the Argo wholly desregarded her duty, neglected to stop her engines and back, but kept her course and speed, until her pilot saw the green, or starboard light, of the steamship, when he attempted to pass ahead of her, by putting his wheel hard aport, which brought the Argo in collision with the steamship, striking her at right angles, on starboard side, about ten feet abaft the stem, from which collision the Argo in a few minutes sunk, and became a total loss.

4th. Petitioner further shows that at and before the time of said collision, the Argo carried no masthead light, but that all her lights were on the pilot house, the colored lights being placed on the respective sides, and the white light on the forward end of the pilot house, all at the same height, and but a few feet above the water, which arrangement of lights was unusual, and gave them the appearance of being at a greater distance than they actually were, thus tending to mislead an approaching vessel.

5. Petitioner further shows, that the lights of the Argo being so located and arranged, were not visible until she had cleared the "Tug Day Dream," and her tow of several luggers, which

were coming to a landing on the east bank of the river about half a mile above the steamship, and that the steamship was compelled, at the time she first signalled, to pull out from the bank to clear them, as she could not safely go between them and the bank, or go closer to the bank, which the pilot of the Argo must have known, as he had just passed the tug and luggers.

6th. Petitioner further shows, that the Argo was on the east side of the river, out of the proper course of descending vessels, which is in the middle of the stream, and was running at the dangerous and excessive speed of eighteen or twenty miles an hour, and that her sudden appearance, after clearing the tug and luggers, at a distance of less than half a mile, put the steamship in such extreme peril, that her pilot was compelled to take instant action to avoid a collision, but the pilot of the Argo made no effort whatever, to prevent a collision, although he could have prevented it at any time, after the signal of the steamship was given, by stopping the engines of the Argo and backing, or by keeping his course, or putting his wheel to starboard.

7th. Petitioner further shows, that the said steamer Argo, was not at the time she began her voyage, and at the time of said collision, well and sufficiently officered and manned, the only deck officer on board being James Brown, who was compelled to act as Master, pilot, mate, wheelman and lookout, and he could not, owing to the multiciplicity of his duties, and did not give proper attention to the navigation of his vessel.

8th. Pettioner further shows, that lacking two men to complete the necessary crew, before the Argo left New Orleans, for said voyage to the Jetties, the master engaged and took as part of his crew for the voyage, Faure Bourgeois de Blesine and H. P. Hester, neither of whom were seamen, and that the said Hester undertook the management, and had charge of the vessel, representing the New Orleans Picayune, which had chartered her use for the voyage, and as such had the right to give all orders in regard to her navigation; that both said parties lost their lives by said collision.

9th. The said collision was in no wise caused by fault, on the part of the said steamship, her pilot, master, officers, or crew, but was caused solely by the fault and negligence of the owner of the said steamer Argo, and the said Hester, in not properly manning her, and by the fault of those on board engaged in her navigation, as hereinbefore set forth.

10th. Although said collision happened, and the loss, damage and injury were incurred, without fault on the part of petitioner, or his said steamship, and without his privity, or knowledge, nevertheless, Oscar M. Springer, alleging himself to be the owner of said steamer Argo, has libelled said steamship in the about

cause, claiming $40,000, as damages for her loss; and Mrs. Marie B. Bourgeois de Blesine, alleging herself to be the mother of the said Faure Bourgeois de Blesine, has filed a libel against your petitioner, in personam, No. 13,323, on the docket of the Court, claiming $20,000 damages, on account of the death of her son; and Mrs. H. P. Hester, of this city, threatens to file a suit against petitioner for damages, on account of the death of her husband, the said H. P. Hester, besides which, the following named parties, officers and members of the crew of the Argo, have intervened in this cause, claiming damages for the loss of personal effects, alleged to have been lost by said collision, viz:

James Brown	$213.00
Isaac Broadhurst	$51.45
Robert J. Orkney	$20.25
Charles A. Dessemud	$4.00
Samuel Jewett	$25.50
Edwin C. Green	$5.00

In addition to sail claims, petitioner fears that there are others, upon which suit may be brought, of which he has no present knowledge; and the amount, for which actions have already been brought, exceed the value of said steamship and her freight, pending at the time of the collision.

11th. Petitioner under these circumstances, desires to claim the benefit of the provisions of sections 4283, 4284 and 4285 of the Revised Statutes of the United States, and the acts amendatory thereof, and supplemental thereto, but by reason of the acts hereinbefore set forth, he desires to contest his liability, and the liability of his said steamship, Albert Dumois, to any extent whatever, for any, and all loss, destruction, damages and injury, resulting from said collision.

12. Petitioner, for the purpose of availing himself of said laws, limiting his liabilty in cases of this character, and obtaining the release of his said vessel, tenders himself willing and ready, and offers to give a stipulation with good and solvent surety in the value of said steamship, and her freight, pending, at the time of said collision, whenever it shall be ordered, for the benefit of said parties, who have already propounded their claims, as well as for the benefit of all others, who may hereinafter, in due time, claim damages on account of said collision, either against him or his said steamship.

That all and singular the allegations of this petition are true.

Wherefore, your petitioner prays, as he has already done in his original petition, without again repeating the prayer thereof; and further that he may have and retain the benefit of all pro-

cess heretofore issued thereon, as well as of all proceedings had, or ordered granted, upon said original petition.

And by way of amendment and supplement to the prayer of said original petition, petitioner further prays, that the court may be pleased to decree, that he, and his said steamship, were not at fault in said collision, and that they are not liable for any of the loss, injury or damages, occasioned thereby, and that the libels and interventions, filed in this cause, and all other claims that may have been sued on, or may be brought against him and his steamship, may be rejected with costs.

But in case the court shall find that both vessels were in fault for said collision, then in that case, petitioner prays, that the damages done to his said steamship in said collision by the Argo, may be allowed as an offset, against any award that may be made in favor of the libelant, in this cause, to the extent claimed in petitioner's answer to the libel herein.

And petitioner further prays that if the court shall award full damages against him, and his said steamship, in favor of the intervening libelants, for the loss of their effects, that then and in that case, one-half of the damages that shall be so awarded, may be allowed as an offset, against the amount the said Springer may recover; that if your petitioner and his said steamship shall also be compelled to pay the full amount of the damages that may be awarded to the legal representatives of the said Blesine and Hester, then petitioner prays that the said Oscar M. Springer may be decreed to be liable for one-half of all such damages, and that any judgment he may recover, against petitioner and his said steamship, may be decreed to be compensated and extinguished to that extent.

And petitioner prays, that the said parties may be cited to answer this amended petition; and he prays for such other and further relief in the premises, as the nature of the case may require, and as the Court is competent to give.

ROUSE & GRANT,
Proctors.

State of Louisiana, :
Parish of Orleans. : ss.

L. B. Rustad being duly sworn, says, that he is master and bailee of the owner of the Steamship Albert Dumois, and entitled to claim possession thereof, and to appear for said owner, who is absent from the United States, and to prosecute the foregoing petition on his behalf, that the allegations of said petition are true to the best of his knowledge, information and belief.

(Signed) L. B. RUSTAD.

Sworn to and subscribed before me this 15th day of April, 1897.

(Signed) H. G. DUPREE,
[Seal] Notary Public.

Indorsed: Service accepted April 15th, 1897. (Signed) Denegre, Blair & Denegre, for Mrs. Hester. Service accepted for O. M. Springer and Interveners and Mrs. de Blesine, April 28th, 1897. (Signed) R. DeGray, Proctor.

PETITION OF MRS. GENEVIEVE KEPLINGER HESTER, WIDOW AND NATURAL TUTRIX.

Filed May 5th, 1897.

United States District Court, Eastern District of Louisiana.

Oscar M. Springer	:	
vs.	:	No. 13,319.
Norwegian Steamship Albert Dumois.	:	

To the Honorable Charles Parlange, Judge of the United States District Court for the Eastern District of Louisiana:

The petition of Mrs. Genevieve Keplinger Hester, of the City of New Orleans, State of Louisiana, in her own behalf, as widow of Harrison P. Hester, and as natural tutrix of his minor child, Harrison Hester, respectfully shows:

That she is the widow of the late Harrison P. Hester, who departed this life on or about the 28th day of January, 1897, as hereinafter stated, without children and leaving surviving your petitioner, to whom a posthumous girl child of said Harrison P. Hester was born on the 19th of March, 1897; that on the 27th day of January, 1897, the steamer Argo being then in the port of New Orleans, at about the hour of 7 o'clock p. m., started on a voyage or trip from the City of New Orleans to the Jetties at the mouth of the Mississippi River and back to said city, with said Harrison P. Hester on board thereof as one of her passengers.

That while said Argo was proceeding down said river on said trip, and when she had arrived near a place on said river called Oyster Bayou, Canal, it being then shortly after midnight, the said Argo being then in the middle of the river passing down in the current thereof, the Master of said Argo, who was a duly licensed and qualified pilot, was at the wheel, and noticed over his port bow a steamer ascending said river on the

left bank thereof and more than a mile distant, and waited for her to signal, but finding that she did not do so, he blew one blast of his whistle, signifying he would keep his course and pass to starboard, or on his right of said steamer so ascending on the left bank of said river, that said ascending steamer came on without a reply for a time and then blew two blasts of her whistle—crossing the signal from said Argo, to which the master of the Argo immediately replied with one blast of his whistle, signifying that he would pass on his right of said ascending steamer, and put his helm hard aport to go wide of said steamer, that at the time, or immediately after the crossing of said Argo's signal by said ascending steamer, she changed her course, swung across the river with great rapidity, crossing in the direction in which said Argo was proceeding, and when she had arrived within about one or two hundred feet of said Argo, she then blew her danger signal of three blasts of her whistle, but continued right on her course in utter disregard of all the signals of said Argo, until said Argo struck her on her starboard bow about 8 feet aft of her stem, whereby said Argo's bow was smashed in and she sank out of sight to the bottom of said river in a few minutes thereafter and became a total loss, and shortly after said sinking it was discovered that said steamer was the Albert Dumois, owned by said Anders Jakobsen.

That said Argo was a very fast vessel, and when descending said river in the middle thereof and observing said steamer on the left bank thereof, was making fully 18 miles per hour, and the courses on which said steamers were proceeding they were a great and safe distance apart and had said steamer Dumois kept her course as she was bound to do, there was not the slightest danger of a collision until said steamer crossed the signals of the Argo as aforesaid and changed her course, when, owing to the speed with which the Argo was proceeding, and the fact that she was built for speeding forward and not backward, and could not be backed until her wheel, which was making 200 revolutions per minute, had stopped and her engine reversed, when her ability to back against the strong current then running in the river was very slight (all of which was well known to the master of said Argo) said Master's judgment at the time of the crossing of his signals as aforesaid, was, that it was best for him to continue his speed to get the better control of his vessel, port his helm, and pass wide of said ascending steamer, but which owing to the speed of said ascending steamer, which had not been stopped, he failed to do, but struck her on her port bow as aforesaid.

That the management of said ascending steamer in not blowing the first signal, and in crossing the signals of said Argo, and from the time she left the left bank of said river to the time she

was struck by said Argo was in all things unskillful and wrong, and caused the sinking and loss of said Argo.

That as soon as the collision occurred, it was the duty of the Dumois to lower her boats and make every effort to save the life of petitioner's husband, and others aboard of the Argo, and this she wholly failed to do.

That in and by the sinking of said Argo caused by the carelessness, negligence and improper conduct of the officers in command of said Steamer Dumois, Harrison P. Hester was lost and drowned, and from the time of the collision to the time of the drowning, endured great fear, shock, pain and anguish of death for which no adequate compensation could be made in money, but which petitioner, as surviving widow and natural tutrix, claims ten thousand dollars. That said Harrison P. Hester was only 25 years of age, strong and healthy, of bright prospects, and was the only support of petitioner. That said Harrison P. Hester was at the date of his death earning a good livelihood for himself and petitioner, and but for the negligence and carelessness of the steamer Dumois, and those in charge of her, had every hope, prospect and promise of earning and would have earned a handsome competency and provided handsomely and even luxuriously for your petitioner and child for very many years; that by reason of his aforesaid death, petitioner and the minor child have been suddenly deprived of his companionship, affection and support, to their great damage in the further sum of ten thousand dollars.

Petitioner further shows that since the occurrence of the collision above set forth, the owner of the steamship Albert Dumois has filed a petition in this Honorable Court asking to be allowed the benefit of the limitation of liability Act of Congress; that his steamship Dumois, and the freight then pending, has been appraised and a stipulation given for the amount of said appraisement, and a restraining order has been issued restraining the prosecution of any libels, suits or actions against steamship Dumois, or her owner, Anders Jakobsen; and your petitioner, and all parties in interest have, by monition, been cited to appear before this Honorable Court and make due proof of their claims arising out of said collision.

Wherefore petitioner prays that Anders Jakobsen, owner of the steamship Dumois, and Oscar M. Springer, and Mrs. Marie B. Burgeois de Blesine, and all other parties in interest, be cited to answer this petition and take notice of the filing of this claim and for judgment, in due course, in favor of your petitioner, as widow of Harrison P. Hester and as natural tutrix of his minor child, Harrison Hester, and against all parties in interest, decreeing the payment to your petitioner of the sum of Twenty thousand Dollars, out of the sum of Thirty-one thou-

sand three hundred and thirty-three dollars and seventy-five cents, the appraised value of the Steamship Dumois, and freight then pending, and against the sureties upon the bond filed by the aforesaid owner of the steamship Dumois; and for such other and further orders as may be necessary and proper, and for general relief.

New Orleans, May 4th, 1897.

(Signed) GENEVIEVE KEPLINGER HESTER.
(Signed) DENEGRE, BLAIR & DENEGRE,
Proctors for Petitioner.

Mrs. Genevieve Keplinger, widow of Harrison P. Hester, being duly sworn, deposes and says, that all the facts and allegations of the foregoing petition are true and correct to the best of her knowledge and belief.

(Signed) GENEVIEVE KEPLINGER HESTER.

Sworn to and subscribed before me this 4th day of May, 1897. (Signed) FELIX J. PUIG,
Notary Public.

Indorsed: Service accepted for Oscar M. Springer and Mrs. de Blesine.

(Signed) R. De GRAY,
Proctor.

Service accepted May 5th, 1897.

(Signed) ROUSE & GRANT,
Proctors for Claimant.

ANSWER OF MRS. GENEVIEVE KEPLINGER HESTER, WIDOW AND AS NATURAL TUTRIX.

Filed May 5th, 1897.

United States District Court, Eastern District of Louisiana.

Oscar M. Springer :
vs. : No. 13,319.
Norwegian Steamship Albert Dumois. :

To the Honorable Charles Parlange, Judge of the United States District Court for the Eastern District of Louisiana:

The answer of Mrs. Genevieve Keplinger, as widow of Harri-

son P. Hester and as natural tutrix of his and her minor child, Harrison Hester, to the libel and amended libel of Anders Jakobsen, Respectfully shows:

Respondent admits that on the 28th day of January, while the Steamship Dumois was proceeding up the Mississippi River, she came into collision with the Steamer Argo.

2. Respondent denies that said Steamship was properly manned and equipped, and demands strict proof of the same, and of the other allegations of the 2nd article of the amended libel.

3rd. Respondent denies that the Steamship Dumois was at or before the collision proceeding up the river as close to the east bank as it was safe for her to do, and all other allegations of the 3rd article of the libel, but avers the truth to be that while the Argo was proceeding down the river on a trip to the Jetties, when she had arrived near a place on said river called Oyster Bayou, ———— Canal, it being then shortly after midnight, the said Argo being then in the middle of the river passing down in the current thereof, the master of said Argo, who was a duly licensed and qualified pilot, was at the wheel, and noticed over his port bow a steamer ascending said river on the left bank thereof and more than a mile distant, and waited for her to signal, but finding she did not do so, he blew one blast of his whistle, signifying he would keep his course and pass to starboard, or on his right of said steamer so ascending on the left bank of said river; that said ascending steamer came on without a reply for a time and then blew two blasts of her whistle, crossing the signals from said Argo, to which the master of the Argo immediately replied with one blast of his whistle, signifying that he would pass on his right of said ascending steamer, she changed her course, swung across the river with great rapidity, crossing in the direction in which said Argo was proceeding, and when she arrived within about one or two hundred feet of said Argo, she then blew her danger signal of three blasts of her whistle, but continued right on her course in utter disregard of all the signals of said Argo, until said Argo struck her on her starboard bow about 8 feet aft of her stem, whereby said Argo's bow was smashed in and she sank out of sight to the bottom of said river in a few minutes thereafter and became a total loss, and shortly after said sinking it was discovered that said steamer was the Albert Dumois, owned by said Anders Jakobsen.

Respondent admits that through said collision, the Argo became a total loss.

4. Respondent denies that the Argo did not carry proper lights, or that the master, pilot and persons in charge of the Dumois were misled thereby.

5. Respondent denies that the Steamship Dumois was com-

pelled to push out from the east bank in order to clear the Tug Day Dream and tow, and avers that the said Dumois was being navigated further from the east bank than was properly her course; that she was outside the usual course of vessels ascending and too close to the middle thereof.

6. Respondent denies that the Argo was on the east side of the river out of the proper course of descending vessels, and also denies the other allegations of the 6th article of the libel, and avers that the Argo was in or near the center of the river descending, was being navigated rapidly; that when the Dumois and Argo discovered each other nearly half a mile off, there was not the slightest danger of a collision had the Dumois kept her course, and that the peril in which both were placed and the collision was due to the Dumois altering her course, when, owing to the speed with which the Argo was proceeding, and of the fact that she was built for speeding forward and not backward, and could not be backed until her wheels, which were making 200 revolutions per minute, had stopped, and her engines been reversed, the master of the Argo deemed it best to continue his speed, port his helm and pass to the starboard of the Dumois; that owing to the speed of the Dumois and her alteration of her course, the Argo failed to clear the Dumois and after struck her on her port bow, as aforesaid.

7. Respondent denies the allegations of the 7th article, and avers that the Argo was sufficiently officered and manned.

8. Respondent denies the 8th article of the libel. Respondent admits that the Argo was chartered by the New Orleans Picayune, that Hester was employed by said Picayune, but denies that he was a member of the crew, or had charge of the navigation of the vessel or the method of her navigation, and avers the truth to be that beyond the communication to the Master of the Argo of the destination to which his vessel was going, said Hester had nothing to do with the management or navigation of the Argo, or of the manner in which she was to reach her destination; such matters being entirely in the care, charge and under the control of the Master of the Argo.

9. Respondent denies the allegations of the 9th article of the amended libel, and avers that the collision was caused by the fault or negligence of the owner and master, pilot, officers and crew of the Steamship Dumois, in not properly manning her, and by the fault of those aboard engaged in her navigation, and avers that said Steamship Dumois was in fault in not complying with the first signal, in crossing signals of the Argo, in navigating too close to the center of the river, in altering her course in easy sight of the Argo, and in not lowering her boats and mak-

ing any efforts to save the lives of the crew and passengers of the Argo.

Respondent further avers that all of the allegations of fact made by her in this answer, have been made upon information received by her, and to the best of her information; that she has no personal knowledge of any of the facts herein stated.

Respondent further shows that by reason of the aforesaid, she and her minor child, Harrison Hester, has, through the death of her husband, Harrison P. Hester, suffered damages to the extent of ten thousand dollars, and said Harrison P. Hester suffered damages in the sum of ten thousand dollars, cause of action for which survives to your petitioner and her said minor child, all as set forth in the libel, or claim, herein filed by your respondent, and to which respondent refers and asks to be taken as part of this answer as if fully incorporated herein.

Wherefore, respondent prays that there be judgment in her favor in the sum of Twenty Thousand Dollars.

New Orleans, May 4th, 1897.

(Signed) GENEVIEVE KEPLINGER HESTER.

(Signed) DENEGRE, BLAIR & DENEGRE,
Proctors for Respondent.

Affidavit.

Mrs. Genevieve Keplinger, widow of Harison P. Hester, being duly sworn, deposes and says, that all the facts and allegations of the foregoing answer are true and correct to the best of her knowledge and belief.

(Signed) GENEVIEVE KEPLINGER HESTER.

Sworn to and subscribed before me this 4th day of May, 1897.

(Signed) FELIX J. PUIG,
Notary Public.

ANSWER OF O. M. SPRINGER TO PETITION OF ANDERS JAKOBSEN.

Filed May 10th, 1897.

Oscar M. Springer	:	
vs.	:	No. 13,319.
Steamship "Albert Dumois."	:	

United States District Court, Eastern District of Louisiana.

The answer of Oscar M. Springer, sole owner of the late Steam

Yacht "Argo," to the petition of Anders Jacobes, as amended by petition filed on the —— day of ————, 1897, claiming the benfit of the limited liability acts of Congress in such case made and provided.

And now comes Oscar M. Springer, of Detroit, Michigan, and owner of the late yacht Argo, and libelant in the above entitled and numbered suit, and for answer to the petition and amended petition of Anders Jacobs as amended, doth allege and propound as follows, to-wit:

First: In response to the first article in said petition contained, respondent says he admits that on the 28th day of January, 1897, at about the hour of 12:40 a. m., a collision did take place in the Mississippi River between the Steamship Albert Dumois and the said yacht Argo, and at the place in the Mississippi stated.

Second. In response to the second article in said petition contained respondent denies that at the time of said collision said steamship was properly manned and equipped, and had a full complement of officers and seamen on board, and avers that the officers and crew thereof were incompetent, unskillful and negligent in the performance of their duties on board of said steamship at said time.

Third. Respondent in answer to the third article in said petition contained admits that immediately prior to said collision said Steamship Albert Dumois was coming up the river near, but about 450 or 500 feet from the east bank thereof, and avers her speed was about 10 knots per hour, and he denies that the pilot, lookout or mate, or any one else discovered the lights of the Argo coming down the river close to the east bank or to the starboard of said Dumois, and he denies that there was any competent seaman at the wheel of the said steamship, and that there was properly stationed a lookout forward, and that there was a skillful and competent pilot, and a competent mate on the bridge keeping a vigilant lookout. And respondent denies that before any signal was given by said Argo two distinct and clear blasts of said Dumois' whistle were given, and that said Argo wrongfully crossed the signal of the said Dumois, or in fact that said Argo crossed said Dumois' signal at all, and, on the contrary, avers that about the time stated, or a few minutes later, the said Argo was going down the Mississippi River at the point stated, in the middle of the stream, and in her proper place, and while so descending and when she had reached a point about three-quarters of a mile distant, her master, who was steering said yacht and her lookout on watch, at about the same time, noticed the red light and the white lights of the steamer ascending the Mississippi River in the usual and proper course for ascending vessels, at the

place and under the wind (which was blowing from the west) and the conditions then prevailing, and when said Argo was still in the middle of said river, and said Dumois on or near said eastern shore thereof, and when she had arrived at a point about half a mile distant from said Dumois, and before said Dumois had given any whistle or signal whatever, said Argo gave one clear and distinct blast of her whistle, indicating that she would keep her course and pass said Dumois on said Argo's left or port side, but that said Dumois, not heeding said Argo's one blast of her whistle, wrongfully crossed the same with two blasts of her whistle, and commenced crossing the stream and the course of the said Argo, and shut out her red light and showed her green light; that thereupon said Argo replied with one blast of her whistle, indicating that she would pass said Dumois on her said Argo's left, and put her helm hard aport to go wide clear of said Dumois as she had a right to do, and as in the judgment of her Master and Pilot, under the circumstances, it was best for all parties that said Argo should do, but that said Dumois continued her course and blew her danger signals, but only a second or so before the said Argo struck her on her starboard side, or bow, about 8 feet aft of her stem, and said Dumois continued on her course up the river for a half mile or more before she stopped, going rapidly past said Argo, which sank in about four minutes after said collision, becoming a total loss, and causing the death of Faure Bourgenoi de Blesine and H. P. Hester, who were on board said Argo at said time, but said collision caused no damage whatever to said Dumois.

Fourth. In answer to the fourth article in said petition contained, respondent admits that said Argo carried no masthead light, and that all her lights were on her pilot house, the red light on the port side and the green light on the starboard side thereof, and the white light on the forward part of said pilot house, but he denies that they were all at the same heighth of or on the same plane, or that they were but a few feet above the water, or that they were in any manner misleading to an approaching steamer, and he avers that said lights were in all things the proper lights for a yacht of the Argo's class and kind, and were placed according to law, and were at the time of said collision burning brightly and in no manner did or could contribute to said collision or mislead the pilot of said steamship.

Fifth. In answer to the allegation in the fifth article of said petition contained, respondent denies that the lights of said Argo were not visible until she had cleared the Tug Day Dream and her tow of luggers, which were at the time landed on the east bank of the river about half mile above the said steamship; and he denies that said steamship was compelled to pull out from the east bank to clear said luggers, and avers that if said lights were

not seen it was the fault of the pilot and lookout of said Dumois; and further avers that there were fully three hundred feet between the course the Dumois was then runnig and the said luggers, and plenty of room to allow her to pursue her course and clear said luggers, which were at the time landed on said eastern shore, and he avers that at said time the course of said Argo was to the west ward of that of said Dumois. and in the middle of the river, and that had said Dumois not wrongfuly and improperly left her course on the eastern shore and improperly crossed the course of said Argo, no collision would have been possible.

Sixth. In response to the sixth article in said petition contained respondent denies that said Argo was on the east side of the river and out of her proper course for descending vessels and avers that she was in the middle of the river in her proper course, and that her speed of 18 miles an hour was not dangerous or excessive; and, further answering said article, denies that said Argo's appearance to said Dumois was at any time sudden, or that she could not plainly and distinctly have seen on that clear starlight night at a distance of less than half a mile, and he denies that the said Dumois was at any time put in extreme peril by reason of any action or fault of said Argo, her master, pilot or crew, and he denies that the pilot of said Dumois was compelled to take instant action to avoid a collision, and avers that through want of skill, prudence, and by carelessness, the pilot of said Dumois took just the action to bring about the collision that did occur by refusing to heed the two separate signals of one blast of the whistle of said Argo, and crossing her signals and course as hereinbefore described, all of which was sudden, wrong and unanticipated, and put the said Argo in extreme peril, and the judgment of her master and pilot was, that the very best thing he could do, was, owing to the speed with which he was passing through the water and with the current, and the slight ability of the Argo to stop and back, which could not be accomplished in less than ten minutes, to put his helm hard aport and proceed with all possible speed and pass in front of said Dumois and which would have been accomplished had said Dumois, even after wrongfully crossing the signal and course of said Argo, stopped when she blew her danger signals, and that at the time of and before said collision the lights of said Argo were burning brightly and were plainly visible for a distance of more than two miles, and if they were not seen at less than half mile as alleged, it was solely due to the fact that no sufficient lookout was had on board of said Dumois.

Seventh. In response to the seventh article in said petition contained respondent denies that said Argo was not well and sufficiently officered and manned, and he denies that she did not

have on hand at the time a competent and skillful lookout, and that he was not on duty, and he denies that there were any duties of Brown that rendered it improper for him to give, or that he did not give proper attention to the direction and steering of said Argo, and he avers and shows that said Argo was not a large or ocean-going steamer, but a pleasure yacht 100 feet long, and of only 48 gross and 24 net tons burden, and only licensed to navigate lakes, bays, sounds and rivers, and as such was engaged on a short trip, and only from the port of New Orleans to the Jetties, where she was to remain for sometime, and then return to said city, and said Brown was entirely competent to give and did, in all things, give proper attention to navigation, and he further avers that the full crew of said Argo was 1 Master and Pilot, 1 Engineer, 5 Crew, as per her certificate of inspection herewith filed, all of whom were on board of said yacht at said time, the said de Blesine and said Hester consenting to act as deckhands for which position they were competent.

Eighth. In answer to the eighth article in said petition contained, respondent admits that said Hester and de Blesine agreed to go and act as deck hands on said trip on said Argo in case their services were needed, for which position they were abundantly competent, and he admits that said Hester had charge of said trip for the New Orleans Picayune, the charterer of said yacht, with the right to direct when she should start, when stop and when return, and the like, and respondent admits that in said collision said de Blesine and said Hester lost their lives.

Ninth. In response to the ninth article in said petition contained, respondent denies that said collision was in no way caused by fault on the part of said steamship, her pilot, master, officers and crew, and avers it was solely caused by the negligence and fault of the said Albert Dumois, her pilot, master, officers and crew, who alone are responsible therefor, and for the total loss and destruction of said Argo, and for the lives of said Hester and said de Blesine.

Tenth. In answer to the 10th article in said petition contained, respondent denies that said collision happened and said loss and damage occurred without the fault of said petitioner or said steamship Dumois, and he admits, that this respondent, as owner of said Argo, has libelled said Dumois for $40,000 for damages for her total loss, and that Mrs. de Blesine has filed a libel in personam against said petitioner as stated, claiming for the death of her son $20,000, and that Mrs. Hester has threatened to file, and avers she has filed a petition herein claiming $20,000 for the loss of her husband. And further admits that the other parties named have filed interventions claiming the amounts stated for the loss of their effects on board of said Argo, by said collision.

Eleventh. In response to the 11th article in said libel contained, respondent denies that said steamship, Albert Dumois, is entitled to the benefits of sections 4283, 4284 and 4285 of the Revised Statutes of the United States, or any acts amendatory thereof.

Twelfth. Respondent further says he admits the filing of said petition claiming the benefits of said laws limiting said petitioner's alleged liability for damages resulting from said collision, that petitioner has tendered and given good and solvent stipulation for the value of said steamship and her pending freight and that said vessel has been released as in said article stated.

And further answering respondent says that in case the Court should find that said Argo was in any manner at fault in the said collision, in any way or form, then he says that at the time of said collision said Argo was under charter to the New Orleans Picayune Newspaper Co., to make a trip from the city of New Orleans to the Jetties, at the mouth of the Mississippi River, and return, for the price or sum of $100.00, and was at the time under the management of said Hester, who was on board of her for said Company and as her representative, no part of which money has been paid as the trip was broken up by the collision aforesaid before the same was half completed, and that by said collision said Argo was sunk and completely lost, and there is no personal liability against respondent for any loss or damage to the said Steamship, Albert Dumois if any has occurred which is denied), nor to the said Mrs. de Blesine for the loss of her son, nor to the said Mrs. Hester for the loss of her husband, nor to the other parties (interveners in said petition named), nor is there any liability on the part of the said Argo to said parties, or either of them, beyond the value thereof as she lies sunk at the bottom of the Mississippi River at said point of collision, and he now herein and hereby surrenders her as she now lies sunk as aforesaid, and any claim he may have for said charter money, for the benefit of all parties who may in any manner have any claim against him, or the said yacht, Argo.

Wherefore, respondent prays for judgment as in his original libel set forth, for costs, and for such other and further relief and redress as to right and justice may appertain and as the court is competent to give in the premises.

(Signed) OSCAR M. SPRINGER.

(Signed) RICHARD De GRAY,
Proctor for Respondent.

State of Michigan, :
County of Wayne. : ss.

Oscar M. Springer being duly sworn, deposes and says, that he resides in Detroit, in the State of Michigan, that he is the respondent in the foregoing answer, and that the matters and things therein set forth are true to the best of his knowledge, information and belief.

Subscribed and sworn to on the 8th day of May, A. D. 1897, before

[Seal] (Signed) JOHN BALLANTYNE,
Notary Public, Wayne Co., Michigan.

PETITION OF OSCAR M. SPRINGER TO FILE SURRENDER OF WRECK AND FREIGHT MONEY OF STR. ARGO.

Filed December 16th, 1897.

United States District Court, Eastern District of Louisiana.

Oscar M. Springer	:	
vs.	:	No. 13,319.
Steamship "Albert Dumois."	:	

The petition of Oscar M. Springer, libellant in the above case, with respect shows, that he was the sole owner of said Argo at the time of the collision between said Argo and the Steamship, Albert Dumois, which is the subject of this case; that at said time said Argo was under charter to make said trip from New Orleans to the Jetties and return to New Orleans for the sum of $100—no part of which has been collected by petitioner; that when said collision happened, said Argo was in first class condition, thoroughly seaworthy and fully manned by a competent crew, and the loss and damage thereby occasioned, occurred without his privity or knowledge, and that he desires again to make surrender of said Argo, as she now lies sunk on the bottom of the Mississippi river in seventy odd feet of water at a point about 85 miles below the city of New Orleans, and now herewith files a surrender of the same to the claimants of the Dumois, and the other intervening libellants and claimants herein; and prays such relief as is accorded by law.

(Signed) RICH[illegible] De GRAY,
Proctor for O. M. Springer.

(Signed) OSCAR M. SPRINGER.

Subscribed and sworn to before me this 16th day of [illegible]ember, 1897. (Signed) FRANK H. MORTIMER,
U. S. Comm'r.

SURRENDER OF WRECK OF ARGO & CHARTER MONEY BY O. M. SPRINGER.

Filed December 16th, 1897.

Oscar M. Springer :
vs. :
Norwegian Steamship Albert Dumois. :

United States Circuit Court for the Eastern District of Louisiana.

Now comes Oscar M. Springer, the above named libellant, and herein and hereby assigns and surrenders to the intervening parties and claimants in the above entitled cause, all his right, as sole owner of the Argo, in and to said Argo as she now is in her wrecked condition at the bottom of the Mississippi River; together with any and all claims that might or could be made by me against the New Orleans Picayune Newspaper, or against the estate of Mrs. E. J. Nicholson, proprietor of said newspaper, on account of charter money due, or that might be due, me or said Argo, for the trip she was making at the time she was wrecked and lost.

(Signed) OSCAR M. SPRINGER.

Dated at New Orleans, December 16th, 1897.

Witness:

(Signed) HENRY J. CARTER.

HEARING AND SUBMISSION.

Extract from the Minutes.

November Term, 1897.

New Orleans, Thursday, December 16, 1897.

Court met pursuant to adjournment.

Present: Honorable Charles Parlange, Judge.

No. 13,319. Oscar M. Springer vs. Steamship Albert Dumois; No. 13,323, Mrs. Marie B. Bourgeois de Blesine vs. S. S. Albert Dumois.

These causes, consolidated under order of Court entered herein on May 7th, 1897, came on this day to be heard upon the pleadings, exhibits, evidence and depositions as specified in the Notes

of Evidence offered in behalf of the parties hereto respectively:

Present: Richard De Gray, proctor for O. M. Springer and Mrs. Marie B. Bourgeois de Blesine, Libelants; Rouse & Grant, proctors for Claimant of the Steamship Albert Dumois; Denegre, Blair & Denegre, proctors for Mrs. Genevieve Keplinger Hester, Petitioner and Libelant; and was argued, in part, by Mr. De Gray, proctor for Libelants, and continued until to-morrow; said proctor surrendering in open Court, on behalf of Oscar M. Springer, the sole owner of the Argo, to the Claimant of the Steamship Albert Dumois, and the other intervening libelants and claimants herein, the wreck of the Argo as she now lies sunk at the bottom of the Mississippi River; all as stated and set forth in the written surrender on file and of record in this cause.

FURTHER HEARING OF CAUSE.

Extract from the Minutes.

November Term, 1897.

New Orleans, Friday, December 17th, 1897.

Court met pursuant to adjournment.

Present: Honorable Charles Parlange, Judge.

No. 13,319. Oscar M. Springer vs. Steamship Albert Dumois; No. 13,323, Mrs. Marie B. Bourgeois de Blesine vs. S. S. Albert Dumois.

The hearing of these causes, consolidated, as continued from yesterday, was this day resumed.

Present: Mr. De Gray, Mess. Denegre, Blair & Denegre and Mess. Rouse & Grant, the proctors for the respective parties in interest.

When, after hearing further argument in behalf of the libellant, and by Mr. Grant, on behalf of the Claimant of the Steamship Albert Dumois, it was ordered that the cause be continued until to-morroy at 11 o'clock A. M.

SUBMISSION OF CAUSE.

Extract from the Minutes.

November Term, 1897.

New Orleans, Saturday, December 18th, 1897.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, Judge.

No. 13,319. Oscar M. Springer vs. Steamship Albert Du-

mois. No. 13,323. Mrs. Marie B. Bourgeois de Blesine vs. S. S. Albert Dumois.

The hearing of these causes, consolidated, as continued from yesterday, was this day resumed.

Present: Mr. De Gray, Mess. Denegre, Blair & Denegre and Mess. Rouse & Grant, proctors for the respective parties.

When, after hearing further argument on behalf of the Claimant, and by Mr. Denegre, proctor for Mrs. Hester, the cause was submitted and taken under advisement by the Court.

NOTE OF EVIDENCE FOR LIBELLANT AND MRS. De BLESINE.

Filed December 16th, 1897.

United States District Court, Eastern District of Louisiana.

Oscar M. Springer	:	
vs.	:	No. 13,319.
Steamship Albert Dumois.	:	

Libellant, Oscar M. Springer, and Intervening Libellant, Mrs. M. B. De Blesine, offer the following Evidence:

Deposition of Capt. James Brown, of March 15th, 1897.

Deposition of Robert S. Orkney, of March 15th, 1897.

Deposition of Robert S. Orkney, and recalled March 25, 1897.

Deposition of Charles Deeseamus, of March 15, 1897.

Deposition of Capt. James Brown, recalled, of March 15th, 1897.

Deposition of Isaac Broadhurst, of March 15th, 1897.

Deposition of Samuel Jewett, of March 15th, 1897.

Deposition of Capt. Bazil Jurisch, of March 15th, 1897.

Deposition of Capt. Bazil Jurisch, recalled, Nov. 30, 1897.

Deposition of Edwin C. Green, of March 16th, 1897.

Deposition of Norbert Buras, of May 21st, 1897.

Deposition of Capt. James Brown, recalled, of May 21, 1897, and again on May 24, 1897.

Deposition of Mrs. Marie B. De Blesine, of March 25, 1897.

Deposition of Frank Huettemann, Timothy E. Tarney, William Howie Muir, Safford S. De Lane and Edward H. Gillman, taken at Detriot, Michigan, June 1st, 1897, June 2nd, 1897, and June 8th, 1897.

Depositions of W. I. Babcock and David M. Cochrane, taken

in Chicago 24 May, 1897, and the Deposition of Thos. E. Miller, of Chicago, taken————————, 1897.

Deposition of N. Deedis, taken 19 March, 1897.

Deposition of E. A. Conrad, taken 17 March, 1897.

Deposition of A. C. Lindauer, taken 17 March, 1897.

Deposition of A. C. Lindauer, recalled, Dec. 14, 1897.

Chart of the River, marked

Picture of the Argo, marked "Libellant 2."

Picture of the boat in connection with the evidence of Deedes and Jurisch, the latter recalled, marked "Libellant 3."

Designation of line by Secretary of the Treasury dividing high sea from Rivers, Harbors and Inland waters, dated July 13, 1895, made pursuant to Sec. 2, Act of February 19, 1895.

Copy Certificate of Inspection by Baker and Youngblood, Inspectors, certified to by Crawford, Dy. Collector, May 6, 1897.

License of Argo for Coasting Trade, dated March 31, 1896.

Piece of Painted Woodwork, marked "Argo 1."

Piece of Rope, marked "Argo 2."

Deposition of O. M. Springer, taken on the 16th December in open Court.

Assignment of O. M. Springer of all interest in wreck of Argo and Charter money due her, &c., dated Dec. 16, 1897.

Deposition of Noble G. Bagley, taken March 19, 1897.

Deposition of Capt. A. Thomas, taken March 19, 1897.

Also Act 71 of 1884, and Art. 2315 R. C. Code.

Deposition of O. M. Springer, given on March —, 1897, called by Claimants.

EVIDENCE FOR THE LIBELLANT AND MRS. M. B. De BLESINE.

Testimony of Capt. James Brown and Other for Libellant.

Filed December 16th, 1897.

District Court of the United States, Eastern District of Louisiana.

Oscar M. Springer	:	
vs.	:	No. 13,139.
Steamship Albert Dumois.	:	

Testimony taken in the above numbered and entitled cause, on behalf of libellant, on the 15th day of March, 1897, before Frank H. Mortimer, United States Commissioner, appointed herein by order of Court to take evidence in this cause.

Appearances: Richard De Gray, Esquire, Proctor for Libellant, and Mrs. Marie B. Bourgeois de Blesine, Messrs. Rouse & Grant, Proctors for Claimants of the Steamship Albert Dumois.

Captain James Brown, witness sworn on behalf of libellant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. Where do you reside?
A. 113 Vallette St., Algiers, La.
Q. What is your occupation?
A. Seaman.
Q. Mariner?
A. Mariner, yes, sir.
Q. How long have you been a mariner?
A. About 44 years.
Q. And in what capacities?
A. From ordinary seaman to captain.
Q. How long have you been captain?
A. I have been captain since 1863.
Q. And what class of vessels have you commanded?
A. I have commanded Schooners and Steamers.
Q. And in what trades have you run?
A. During the war I was running blockade business.
Q. And since the war?
A. Since the war I have been in the Morgan Line steady.
Q. Making what trips?
A. I made trips all over the Coast from Key West to the Rio Grande, Mexico, and contiguous Islands, Cuba, Truxillo, Nicaragua, Central America, all around, to New York.
Q. Have you any other business than that of a mariner?
A. No, sir.
Q. Are you liable to be called away at any time from home?
A. Yes, sir.
Q .Who was master of the Argo in January last?
A. I was.
Q. Do you remember the trip on which she was lost?
A. Yes, sir.
Q. Can you tell us when she left the port of New Orleans?
A. She left Algiers at 7 P. M. on the 27th.
Q. Of January last?
A. Yes, sir.
Q. Destined to where?
A. To the Jetties and return.

Q. Who was on board of her at that time?

A. I had my crew and four passengers, four charterers—them that chartered the vessel.

Q. Who was master and pilot?

A. I was master and pilot.

Q. Who was deckhand?

A. Deseamus.

Q. Who was the engineer?

A. Robert Orkney. Cook, Green.

Q. And the fireman?

A. Isaac Broadhurst. I was short two men, and Hester and Blesine they told me, both of them, that they would lend me a hand in case I wanted them. I was going on a special trip, and the [they] were the Charterers; they volunteered their services to help me; they told me not to wait; they were in a hurry to get down the river on account of the business they were after.

Q. You say you left about 7 P. M.

A. Yes, sir.

Q. Did anything unusual occur on that trip, and if so, what was it?

A. I came in collision with the Albert Dumois.

Q. Where was the point of the collision on the river, where it occurred?

A. It occurred between Lucas Canal and the Salt Works.

Q. Is Lucas Canal and Oyster Bayou the same thing?

A. I think it is.

Q. I now show you Coast Chart Number 194 of the Mississippi river, from the Passes to Grand Prairie, Louisiana. Please look at this chart and mark, if you can, in the river, where the thing occurred. There is Lucas Canal and here is the Salt Works.

(Counsel exhibits Chart to witness, who examines same.)

A. I think it was right here. (Witness makes a large purple dot in the center of the river.)

Q. Please state what kind of a night it was?

A. It was a clear starlight night.

Q. What was the direction of the wind?

A. The wind was about North, North-east, blowing pretty fresh. It was blowing right across the river; it was blowing off of the east bank right across the river.

Q. Whereabouts were you in the river when you first noticed the Steamer which came in collision with you; where was your boat—in what part of the river?

A. I was in the middle of the river.

Q. You were going down stream?

A. Yes, sir.

Q. A short time before you saw this boat, did you see any other boats?

A. Yes, sir; I passed the Day Dream. She was on the east shore; she was making a landing, I think, something of that kind.

Q. Whereabouts, at Lucas Canal?

A. Yes, sir.

Q. Did you give any signal to her?

A. I blew one signal to her, and she answered me by blowing one.

Q. When you passed her, did you see any other vessel?

A. Yes, sir; I saw the vessel—

Q. What did you see, rather?

A. I saw a bright and red light coming up on the East shore.

Q. Who was steering at the time your boat?

A. Myself.

Q. Was anybody on watch with you on deck?

A. Yes, sir; the deckhand was right alongside of me.

Q. Over what bow of your vessel, did you see—

A. On the port side of our bow forward.

Q. How far—did you look at these lights with your naked eye or glasses or both?

A. I looked at them with my naked eye.

Q. Were they plainly visible?

A. Yes, sir; they were visible; they were good lights.

Q. How far away was this red and the white bright light when you saw it?

A. I should judge about half a mile.

Q. And upon seeing it, what did you do?

A. I blowed one whistle.

Q. Prior to your blowing one whistle, had you received any whistle from the other boat?

A. No, sir; not anything.

Q. After you blew one whistle, what then?

A. It was sometime before she answered by blowing two blasts of her steam whistle, the ship coming up.

Q. What did you do then?

A. I immediately afterwards I blowed again. I repeated with one whistle and then put my helm hard aport.

Q. When she blew two whistles, was there any change in her course?

A. Yes, sir; I could see he had starboarded his helm.

Q. What lights did you see then?

A. I saw the green light coming out after she changed her course.

Q. That indicated to you what?
A. That he was going across my bow.
Q. He was going across your course?
A. Yes, sir.
Q. After he blew his two whistles?
A. He never blew any more after that until he blew the alarm.
Q. After you blew your one whistle, the second time, did he reply with two whistles?
A. No, sir.
Q. What did he do after you blew your one whistle the second time?
A. About that time he was right on top of me, very near me, then he blew his alarm.
Q. How did they come together—did they come together shortly after that?
A. About 15 seconds.
Q. In what part of the river were you when you first noticed him?
A. I was in the middle of the river.
Q. Heading which way?
A. Down stream.
Q. In what part of the river were you when the collision occurred?
A. We were a little to the westward of the middle.
Q. After the collision occurred what was done—how did they strike together—where did they strike?
A. I struck the Dumois eight feet from the stem, eight feet,
Q. Did you examine the place afterwards?
A. I did. I saw it when she was at the dock. Then the vessel was going so fast that it was half a mile before her headway was stopped. She went by me so fast she was about five or six seconds passing me.
Q. At what angle did the two boats come together, at right angles?
A. Yes, sir; at right angles, eight feet abaft of her stem.
Q. By the one blast of your whistle and the porting of your helm, what was the purpose of that, to which way did you want to go?
A. I wanted to go to the westward on the other side, out of his way; I was quartering. By the velocity I was going I made sure I could have passed him; we were going pretty near 20 miles an hour.
Q. Was the Argo a fast boat?
A. Yes, sir; she was a very fast boat, a fast yacht; but he steered right across my bow.

Q. At the time the two boats came togther, what was the condition of the Dumois as to speed—was she stopped or was she backing or going ahead?

A. She was stopped but she was going ahead like anything.

Q. By stopped you mean—

A. I mean her engines were stopped; I think they were.

Q. But do you know that as a fact, you were not on board of her?

A. No, sir; I couldn't tell. When we drifted astern I couldn't see any bubbles coming up.

Q. How far past you did she go, before she stopped—you drifted astern?

A. No; as soon as I got under her stern I told the engineer we would try and get to the west bank; we were going across, she was up the river very near half a mile before she stopped, past us.

Q. When she passed you, how was your boat heading, in what direction?

A. I was heading right across the river.

Q Right across to the west shore?

A. Yes, sir.

Q. You say she went up the river fully half a mile before she stopped?

A. Yes, sir.

Q. That is, the Dumois?

A. Yes, sir.

Q. After the collision occurred what was done on your boat? What did you do?

A. They sent the cook—

Q. Did you notice that any damage had occurred?

A. The vessel was making water; it was coming in as fast as it could.

Q. What then was done?

A. I told them to go and call the men that were sleeping aft and wake them up.

Q. Was that done?

A. Yes, sir.

Q. Did they come on deck?

A. Yes, sir; all of them.

Q. Did you see all of them personally?

A. No, I did not; I did not go aft of the bridge; I was steering the boat as long as she kept afloat.

Q. How do you know they came out of the after cabin?

A. That was what the other passengers told me, that were on deck; Mr. Frantz told me and so did Mr. Lindaur.

Q. Was there a boat gotten out?

A. I had the boat in the davits; there was nothing to do but sling her out.

Q. Did you get into the boat—how deep had the Argo—had the Argo settled down in the water?

A. Yes, sir; she was settling very fast; she sunk in about four minutes.

Q. How was she going down, by the head?

A. Yes, sir.

Q. Before you left, describe what you did, how you got away from her?

A. After I saw the boat was sinking so rapidly, we lowered the boat in the water and all hands got into her; then I got in myself and asked if everybody was safe on board, and they answered me in the boat they were, everybody was aboard, and I made sure that all hands were in the boat, until we got away from the boat—from the Argo—after we got away from the Argo they counted the heads; it was very dark, it was clear but dark in the boat, and we found only seven; we ought to have had nine, so those young men were lost, Hester and Blesini, and Mr. Frantz told me they followed him up to get in the boat.

Q. Followed him from the cabin?

A. Yes, sir; and he never saw them afterwards.

Q. How far had you gotten away from the Argo before she sunk—you could see her lights?

A. No, sir; she was going right down, she was sinking right away after we left, we just got out of her suction when she sunk out of sight. You couldn't see anything of the Dumois; she was up the river.

Q. What did you do with your boat then, with your yawl?

A. We were holloaing to them and they were holloaing back to us; we couldn't see her then; they backed down then and we holloaed, lower a boat, because our little boat was very small for seven people. They gave us no assistance whatever.

Q. Did they lower a boat?

A. No, sir, not as I know of; they never came to our assistance at all.

Q. Did you paddle your boat?

A. We paddled with out hands; we didn't have room to pull an oar in such a small boat with seven persons in it. When we got alongside of the Dumois they wanted us to go around on the other side, but we couldn't do it because the current was too strong; our boat was too small and it would have capsized.

Q. Did they have a rope ladder down the side?

A. Yes, sir.

Q. On the starboard side?

A. They had it on the port side.

Q. Didn't they have it first on the starboard side?

A. They told us to go around on the starboard side, and we told them we couldn't, and they brought it on the port side.

Q. You didn't go there because you say the current was too strong?

A. Yes, sir; we would have swamped. She was lying across the river, you know. The Dumois was drifting down at the time I got aboard of her.

Q. How far away from the Argo was this light, this white and the red light, when you first noticed them over your port bow and before you blew your signal?

A. About half a mile.

Q. That was when you gave the signal?

A. Yes, sir.

Q. You saw it before you gave the signal, of course—you saw the white and red lights?

A. Yes, sir; of course I saw it before that.

Q. The question is, how far off when you first saw it—you say now it was about a half a mile when you gave the signal?

A. There's a mistake. I said about half a mile—

Q. When you gave the signal, your first signal?

A. Yes, sir; about half a mile.

Q. Well, how far away was the boat when you first saw her, before you gave the signal?

A. She was about three-quarters of a mile away, I guess; about 3-4 of a mile the way I was going. I understand it now; yes, sir, I saw her some time before I blew the first whistle.

Q. You understand, of course, which vessel should blow first?

A. It was her place to blow first; that is what I was waiting for.

Q. And when she didn't blow—

A. I blew.

Q. You blew because she didn't blow for you first?

A. Exactly.

Q. Captain, did you have your effects on board of the Argo at the time of this collision?

A. Yes sir; I had all my effects on board.

Q. What became of them?

A. They were all lost, all gone.

Q. Can yau give me a list of what they were, or approximate? I have attached here, from a memorandum which you gave me, various items that figure up $213.00; is that correct?

(Counsel shows witness memorandum referred to and witness looks at same.)

A. That is about it, yes, sir.

Q. Please look at the list that is attached to your intervention, under the head of James Brown, and state whether or not they are correct.

A. Yes, sir; I lost all these things.

Q. What do you say as to the value of them?

A. I should say the value is right there—$213. I had instruments and glasses and everything else there—all my effects.

Q. Your clothes, your sextant and glasses—

A. Shoes and hats, and everything; I had everything there, I never took anything off of her since I came from Texas on her; I left everything there.

Q. You say that the Argo went down in about four minutes after the collision?

A. Yes, sir; four minutes.

Q. Was there anything saved from her; if so, what?

A. There was nothing saved from her at all when she went down except a little boat, a little dinky.

Q. Have you ever been down in that section since?

A. Yes, sir; I went down on the B. D. Wood when we dragged for the wreck. I was down there and we dragged two days with the B. D. Wood and the Ella Andrews.

Q. From what points to what points?

A. Out from the canal down three or four miles below where the wreckage came ashore on the other side, on the west side.

Q. There was some wreckage came ashore?

A. Yes, sir; on the west side.

Q. What did that consist of?

A. Stern sheets of the yacht that was aft on the quarter deck; they floated off and went on the west shore life raft.

Q. Was there anything in the shape of life preservers?

A. Yes, sir; there were some of them further down; we didn't see them picked up; they were picked up by some of the natives.

Q. How far below was that where you saw it—was it below Lucas Canal?

A. It was two or three miles.

Q. On the opposite side of the river?

A. Yes, sir; on the west shore.

Q. Would that indicate, in your judgment, anything as to where the collision occurred with reference to the river, whether in the middle of the river or on the east or west bank?

A. It was certainly on the west bank, for that drift came in on the west shore; it was evidently there.

Q. The result of this dragging, endavoring to find the wreck —was it successful or not?

A. No, sir; we didn't pick up anything.

Q. Did you drag on the west side of the river entirely?

A. We dragged from the middle to the west bank; we just took a fleet of chain and stretched it across from the west bank.

Q. You dragged from the west side clear across to the other side?

A. No, sir; we didn't drag on the east bank at all; of course, we knew the boat was down on the west shore; we dragged the middle and west shore.

Q. Did you find the Argo at all?

A. No, sir.

Q. Do you know whether or not that she has ever been found?

A. No, sir; not as yet. There have been parties down there looking after her, dragging for her, but they never have succeeded in finding her.

Q. Then she was a complete loss?

A. Yes, sir.

Q. What was the condition of the Argo—how long had you been on the Argo, or been familiar with her, before this collision or loss occurred?

A. About a year, one year.

Q. What was the condition of the vessel, of the Argo, at the time of her loss?

A. She was in first class condition.

Cross-Examination.

By Mr. Grant:

Q. When you left the City of New Orleans, on the evening of the 27th, you say you were short two deckhands?

A. Yes, sir.

Q. And I believe you have stated, also, that Blesini and Hester agreed to take their places?

A. They said they would help me in anything I wanted them to. We were going on a special trip; they were the charterers.

Q. Were they the charterers?

A. Yes, sir; the Picayune's representatives; Hester was captain of the business.

Q. He had full charge of the expedition?

A. Yes, sir; he had charge of the expedition.

Q. When did they go to bed that night?

A. Really, I couldn't tell you that; about 11 o'clock, I think the cook told me.

By Mr. De Gray: Just tell what you know, of your own knowledge.

A. I didn't see anything of them after 11 o'clock.

Q. Would you have started out, Captain, if Hester and Blessine had not agreed to take the place of those two deckhands?

A. No, sir; I would have waited to pick up another man or two before I left, but they told me there was no use in waiting, they were in a hurry.

Q. You are sure that they agreed to take the places of the two short?

A. Yes, sir; they were in a hurry to get down. The Whitney had left way ahead and they had an object to get down there as soon as they could; that is the reason they chartered us; the boat was chartered by the Picayune, and Hester was captain of the crowd.

Q. Your purpose in going down the river was to follow up the Whitney, who had on board the Congressional Committee who were going down to examine the Jetties?

A. Yes, sir.

Q. Where did you expect to find them that night?

A. At Quarantine.

Q. Didn't you tell Captain Sheldon and other parties that when you first saw the lights of the Dumois, that you thought it was the Whitney at Quarantine Station?

A. No, sir; I never spoke to Captain Sheldon about it; he never asked me; I never had a word with him.

Q. You are positive that you told nobody else about it?

A. Yes, sir; Captain, I passed the Fort at 12:25, and this point at 12:40; I couldn't go from Fort Jackson to Quarantine in 15 minutes, could I? No, sir; Captain Sheldon never spoke a word to me about that collision, nor me to him, not a word.

Q. Did you blow for the Dumois after you passed abreast of the luggers at the Canal?

A. Yes, sir; I blew, but I waited some time for him to blow, and he didn't blow; then I blew one whistle as he was on the east shore.

Q. After you passed the Day Dream?

A. Yes, sir.

Q. How far were you past the Day Dream and her luggers when you blew the whistle first?

A. I suppose I was not more than about, very little distance, about five or six seconds, seven or eight seconds.

Q. Whom did you have on board when you left the City of New Orleans?

A. I had as the crew, sir—the crew you mean?

Q. All the persons on board?

A. We had nine altogether.

Q. Name them?

A. Robert Orkney was the engineer, Isaac Broadhurst fire-

man, Charles Deseamus deckhand, Edwin Green cook, Hester, Blesini, Frantz and Lindaur; they were the Picayune representatives.

Q. Where was Edwin Green at the time you first blew the signal?

A. He was on deck.

Q. Where was Deseamus?

A. He was right alongside of me at the wheel; the wheel was abaft of the pilot house on deck; I was standing right up there.

Q. You had the wheel?

A. Yes sir; always.

Q. And Deseamus was standing alongside of you?

A. Yes, sir.

Q. How long had he been there?

A. Off and on since we left; I kept him there in case I wanted to send him anywhere; he was lookout, too.

Q. You kept him alongside of you?

A. Yes, sir.

Q. Did you give him the wheel at any time?

A. Yes, sir; I let him have the wheel once while I was getting a cup of coffee, just to hold on to it.

Q. Was that before the lights of the Dumois were discovered?

A. Yes, sir; long before.

Q. At that time you had the wheel?

A. Yes, sir; I always had the wheel, or was alongside of it.

Q. Why didn't you blow the signals of alarm when you first discovered the lights of the Dumois?

A. Because I had no business blowing the alarm then, because I was on my right course, and I blew one whistle to him and he answered by two, crossing my signal, which I suppose any man would have altered his signals and stopped his ship coming that close to each other.

Q. You didn't sound that one blast of the whistle until you had passed the Day Dream, when you were less than half a mile from the Dumois?

A. No, sir.

Q. When did you sound it?

A. I sounded the whistle half a mile from the Dumois; that is, the first whistle; I was going very fast, Captain.

Q. You understand the rule to be then, that when an ascending vessel gives the signal for sides, that the descending vessel may give her signal for sides?

A. Yes, sir. I was waiting for him to do it, and I thought I would have to do it; couldn't wait any longer, and so I blew

one whistle and he answered me back two whistles, crossing my signal; then I blew one immediately afterwards, one whistle, then immediately afterwards—and ported my helm quick, when he blew his two whistles; instead of blowing his two whistles he ought to have stopped according to the rules and backed his ship. I ported my helm right away to get out of the road, immediately after the two whistles were blown by him.

Q. What interval of time elapsed between your first and second whistle?

A. I suppose it was not very long. Let us see—about—not more than about 15 seconds.

Q. Then you put your helm hard aport?

A. I put my wheel hard aport, and the velocity I was going I made sure that I would go clear of him. That any sane man would go across my bow I thought it was too much altogether; I have been on this river 40 years, and I never knew anybody to do like that.

Q. Why didn't you stop and back, instead of giving the whistle in the first instance?

A. Because I was right on my course; I had no business stopping and backing the first time, because I was going at such a speed.

Q. Why didn't you stop and back after you saw the Dumois crossing your signal?

A. It was too late then; I thought I could clear her.

Q. It was not too late to port your helm?

A. I ported my helm after I blew the second whistle; she never blew any more whistles.

Q. Why didn't you stop after you blew the second whistle?

A. Because my judgment said I could clear her, with the velocity I was going.

Q. That is the reason you never attempted to reverse, check your speed?

A. No, sir; I made sure I would clear her, that is the reason; you could see yourself when I struck her eight feet from the stem. If that ship was backing when they rung the alarm I would have cleared her two or three hundred feet.

Q. What lights of the Dumois did you see at the time you struck her?

A. I saw the green light; he had shut in the red light right off; as soon as he put his helm starboard crossing my bow, he had shut in the red light. If that ship was backing I would have got clear.

Q. Where were your lights?

A. Right on the pilot house.

Q. Were all three lights on the pilot house?

A. Yes, sir.

Q. On a level with each other?

A. The bright light was here and the red light here, and the green light here.

Q. All on a level?

A. Pretty near on a level.

Q. Did you have a masthead light?

A. No, sir; we didn't use a masthead light.

Q. Did you have a mast?

A. Yes, sir; but we never used it.

Q. How high was it?

A. It was about 25 feet.

Q. You had no light on the masthead?

A. No, sir; never.

Q. How far apart was the green and red lights? How many feet?

A. About eight feet, across the pilot house.

Q. They were, consequently, each of them, four feet from the white light?

A. More than that; about five or six feet. The lights were all right; they were shaded.

Q. The deckhouse, you say, was about eight feet across?

A. Yes, sir; the pilot house.

Q. And you had the green and red lights on each side of the pilot house?

A. Yes, sir.

Q. And your white light in the middle?

A. Yes, sir.

Q. About on the same level?

A. Yes, sir; the side lights stood back, on the end of the pilot house.

Q. They were at the end of the pilot house, at each end?

A. Yes, sir.

Q. Was the stern end of the pilot house round?

A. No, sir; it was square at the after end.

Q. And the white was on the after end?

A. No, sir; it was on the forward end.

Q. How much further forward was the white light than the green and red lights?

A. About five feet .

Q. How far above the water would that light be—how high above the water would your side lights be?

A. About twelve feet.

Q. How high is the pilot house above the deck?

A. About seven feet.

Q. How much free board have you?

A. We had about five feet.
Q. Did you have anything forward of the pilot house
A. We had nothing but a capstan, chain and anchor.
Q. And the mast?
A. The mast was abaft of the pilot house.
Q. The mast was abaft of the pilot house?
A. Yes, sir.
Q. How many masts did you have?
A. We had two, foremast and mainmast.
Q. The foremast was abaft of the pilot house?
A. Yes, sir; it came through, down through the kitchen.
Q. Where was the mainmast?
A. That came through the saloon aft, stepped through the cylinder.
Q. Where was the wheelhouse?
A. The wheel was right abaft of the pilot house on deck.
Q. On the main deck?
A. No, on the upper deck; on the top of the kitchen.
Q. How high is that above the deck?
A. About four feet, four and a half.
Q. Then that left the pilot house above you about four feet, above the level of the wheel?
A. About four feet.
Q. Yes.
A. Hardly.
Q. Hardly—how much?
A. About three feet.
Q. Where was the entrance to the cabin?
A. The entrance to the cabin is from the quarter deck; there is a companion way on the after part of the saloon that opens out on the quarter deck; that is the after deck, you know.
Q. Is it forward or in the stern?
A. It is amid-ships, or quarter; the engine is amid-ships and this abaft of the engine room.
Q. There is no entrance from the cabin to the main deck except that on the quarter deck abaft of the engine?
A. Yes, sir.
Q. You charge $80 for four suits of clothes here?
A. Yes, sir.
Q. Don't you think that is pretty high?
A. No, it is not, Mr. Grant.
Q. Did you buy them from a tailor or ready made?
A. No, sir; ready made; there is a suit cost me more than that. (Witness designates the suit he has on.)
Q. How old were these suits of clothes?
A. Some of them about six or seven months old.

Q. Had they all been worn?
A. Yes, sir; they had all been worn.
Q. One-half dozen shirts; were they new?
A. Not quite new.
Q. How long had you had them?
A. About six months.
Q. Half dozen undershirt and drawers, $25.00?
A. They were fine.
Q. What were they made of?
A. This here knitted stuff, wool.
Q. How long had you worn them, Captain?
A. About the same, sir, off and on I would change them.
Q. Do you know what you paid for them, for these suits of clothes?
A. Some cost $25.00, some $30.00.
Q. Did the undershirts and drawers cost $25.00?
A. Yes, sir.
Q. Now, about this sextant, what kind was it?
A. It was a splendid sextant; it cost $50.00.
Q. How long had you had it?
A. I had it about a year.
Q. Whom did you buy it from?
A. I bought it from a fellow in Galveston.
Q. Second hand?
A. Yes, sir.
Q. You say you paid him $50 for it?
A. Yes, sir.
Q. The marine glasses, where did you buy those, and when?
A. I bought them in Nicaragua; they were hard to get down there; it cost me $25.00.
Q. How did you pay for them, in silver?
A. I paid gold for them.
Q. When did you buy them?
A. Let me see—about three years ago, four years ago—about four years ago.
Q. Do you know what they are worth here?
A. They are fine glasses, French glasses.

Re-Direct Examination.

By Mr. De Gray:
Q. Have you ever been on the ocean with this Argo?
A. Yes, sir.
Q. What kind of a ship was she?
A. She was a very fast boat.
Q. Where did you have her, on the sea?

A. We had her off the Rio Grande, the Gulf of Mexico, Brazos, Santiago, I was in there; Corpus Christi, Matagorda Bay.

Q. Was she capable of crossing the ocean?

A. No, not across the ocean, across the Gulf. You could go to New York in her.

By Mr. Grant:

Q. How much water did she draw?

A. She drew six feet.

Q. You could go to New York on the inside passage?

A. No, sir; on the outside; watch her chance, there is no trouble about that.

Q. She wouldn't go outside on the ocean off Cape Hatteras?

A. You would have to watch your chance. You could go inside; all small boats do that.

By Mr. De Gray:

Q. I show you a photograph of a boat that on its bow has the word Argo—please state whether or not that is a correct picture of the Steamer Argo that was lost in this collision?

(Counsel shows witness photograph referred to, and witness looks at same,)

A. Yes, sir; that is the Argo that was lost in the collision with the Dumois.

Q. Is that a correct picture?

A. Yes, sir.

Q. Now, then, I notice a pilot wheel on the same level as the top of the pilot house and aft of the pilot house—is that the wheel by which this vessel was steered?

A. Yes, sir.

Q. And the side lights, where were they with reference to the wheel?

A. One was on the starboard and the other on the port side, and one forward.

Q. The side lights, I said?

A. Yes, sir.

Q. They were just opposite the wheel on each side.

A. Yes, sir.

Q. Where was the masthead light?

A. It was right forward.

Q. On the forward part of the pilot house?

A. Yes, sir.

Q. I see two posts standing up there, one on each side, what were those?

A. Those were awning posts.

Q. How thick were they?

A. About four inches; they were used to put an awning up

for protection from the sun, to cover the man at the wheel; there were regular shades for the lights.

Q. Please explain where the side lights were; there are three windows there in th pilot house?

A. The red light was immediately over the third and last window aft, and the green light was located similarly on the other side, and the white light was on the front of this pilot house—you see there is a box there?

Q. Yes.

A. That is a shade for the white light, so that you can't see it from aft.

By Mr. Grant:

Q. Was there any side screens to it, to the white light?

A. No; no side screens; there was a box just so you can't see it from the after part. It would sit in the box; there were two little sides on the box, so as not to mix them up.

Q. You did have side screens on the side lights?

A. Yes, sir.

By Mr. De Gray:

Q. When was it that you first conceived that there was any danger of a collision?

A. That was when he blew his two whistles, when I blew one.

Q. When he crossed your signal?

A. Yes, sir; when I blew my one whistle and put my helm to port so as I could clear him as quick as I could; that was the only chance I had left.

Q. What did the Dumois do after that—after blowing two whistles?

A. He didn't do anything at all until he blew his alarm.

Q. Where was he heading?

A. He was going right across my bow; just after he blew his two whistles he put his helm starboard and came right out.

Q. That is when you were put in danger?

A. Yes, sir; in extreme danger.

Q. From the time the Dumois blew the two whistles, crossing your signal, until the boats came together, how long a time elapsed?

A. Not more than about 15 seconds.

Q. You have managed the Argo—run her—for some time?

A. Yes sir.

Q. You know all about how hard she was to stop?

A. Yes, sir.

Q. How far you would have to go to stop her?

A. Yes, sir.

Q. Could you have stopped the Argo in 15 seconds?

A. No, sir.

Q. Could you have checked her speed perceptibly in 15 seconds, going down stream?

A. No, sir; she would hold her way for a quarter of a mile, more than that.

Q. Before she would start to stop?

A. Yes, sir.

By Mr. Grant:

Q. Why didn't you port your wheel when you saw her side light?

A. There was no danger when I first saw his lights, no danger at all; I was going about my business, until he crossed my signal, blew two whistles, then I blew one.

Q. What did you blow one whistle for, if there was no danger?

A. I couldn't do anything else. After I blew one whistle, my judgment said I could go clear of him.

By Mr. De Gray:

Q. You mean one whistle the second time?

A. Yes, sir.

By Mr Grant:

Q. That was after you heard the alarm whistle from the Dumois?

A. No, no, no, no; he didn't blow his alarm then, when I blew one.

Q. You assumed that when you blew one whistle the second time, that the vessels were in dangerous proximity?

A. When I blew the second whistle?

Q. Yes.

A. I put my helm hard aport to go clear of him.

Q. That is not answering the question?

(Stenographer reads the question as per request of counsel.)

A. Yes, sir; I thought there was danger then.

Q. Why didn't you sound the alarm then?

A. I couldn't do anything at that time; I thought that—my judgment said I could clear him according to the velocity I was going at.

Q. You are sure you considered yourself in danger when you blew that one signal the second time?

A. Yes, sir.

Q. And, being in danger, instead of stopping and backing or sounding the signal of alarm, you thought you would go to the right and try to avoid the Dumois?

A. Yes sir; I thought, when he rung the alarm and reversed his engines that it would stop the headway of the ship and get me clear of him, the velocity I was going, him going ten miles an

hour and me going twenty miles an hour, that would be thirty miles an hour.

Q. State when it was that you blew the first signal?

A. I blew the first whistle after passing the Day Dream.

Q. About ten seconds after?

A. Just about 5 or 6 seconds.

Q. That was the first time you blew a signal?

A. Yes, sir.

Q. How long was it, how long after was it before you repeated your signal?

A. I have got it down there, haven't I?—about 15 seconds, I think.

By Mr. De Gray:

Q. When he crossed your signal, and you blew the single blast and put your helm hard aport, if you had undertaken—could you then, owing to the closeness which the vessels were together, could you have stopped and backed and avoided a collision?

A. No, sir; it was impossible.

Q. What was your judgment, at the time you blew your whistle the second time and put your helm hard to port, as to what was best that could be done under the circumstances?

A. That was to go ahead.

Q. Then, I understand you to say, that, considering all the circumstances, the closeness of the vessels together, that it was your judgment, then and there, that the best thing for both to have done was for you to go ahead and throw your vessel to the starboard, put your wheel aport and throw it to the starboard?

A. Yes, sir; my judgment called for that in a tight place like that.

Offer—Counsel for Libelant offers Picture of Argo in evidence, marked Libelant 2.

Same is sent up in the original, per agreement on file. (See page 433.)

Captain James Brown, re-called on behalf of Libelant, testified as follows:

Direct-Examination.

By Mr. De Gray:

Q. You have said that Mr. Hester and Mr. Blesini said they would give you a hand if you wanted any assistance, before you left here?

A. I did.

Q. And you accepted them in place of two men short in the crew?

A. Yes, sir.

Q. What would the other two men have been in the crew on board of the boat if you had had two regular men?

A. They would be two deckhands, that is all; they would lend me a hand if I wanted them.

Q. Where at, on this particular night, would these extra men have been?

A. They would have been sleeping; I didn't want all hands on deck.

Q At the time the collision occurred, then, was there a full complement on watch in running the boat?

A. Yes sir; the lookout, and cook, he was about; myself, engineeer and fireman.

Cross-Examination.

By Mr. Grant:

Q. Where was the lookout stationed?

A. He was up on deck, on the upper deck alongside of me; he was right up alongside of the wheel.

Q. Did he stay there all the time?

A. Yes, sir; he staid there unless I sent him away somewhere.

Q. You did send him away?

A. I did, to look after the lights—keep them in good order.

Q. That is—then his duty was to keep the lights in good order?

A. No, no; to keep the lookout, too; the lights were right there alongside of us.

Q. He was charged with both duties, then?

A. No, sir; not with both duties—well, you may say he was there to attend to the lights, too. I was on deck myself, right by, I would see everything just as well as the lookout; I was not in the pilot house; I was exposed to everything, you know; I was seeing all around everywhere, so was he.

Q. You were on the lookout?

A. We were all on the lookout.

Q. Then man alongside of you, was Deseamus?

A. Yes, sir; Deseamus?

Q. Did you send him below at all?

A. Yes, sir; I sent him below.

Q, He was there alongside of you to do anything you told him to do?

A. Yes, sir; anything I told him.

Q. If you wanted anything below you sent for it by him?

A. Yes, sir; I kept him right by me, you know; he was on the lookout, too, at the same time; in case I wanted anything I would send him.

By Mr. De Gray:

Q. He was alongside of you at the time the collision occurred?

A. Yes, sir.

Q. Who discovered the light of the approaching steamer first, he or you, or did you see it at the same time?

A. I believe he saw it first; I think he did, I am not certain; both of us saw it.

Q. How were your lights burning?

A. They were burning brightly.

Q. You are sure of that?

A. Yes, sir; I am sure.

Q. After the collision occurred, did you see your lights?

A. Yes, sir; they were burning then.

Q. And they burned after you got into the yawl boat?

A. Yes, sir; as far as I could say.

Q. Did you see them?

A. No, no; I couldn't see them after I got into the yawl boat. We were aft, we couldn't see the red light or bright light or green light.

Q. After the collision, how did the boat—what become of the Argo with reference to the yawl boat, I mean?

A. She was going up the river.

Q. Which was?

A. The Argo when she went down.

Q. When she went down she was headed up the river?

A. Yes, sir.

Q. I understood you to say first she was headed for the west shore?

A. Yes, sir; but afterwards I couldn't steer her going down by the head; she headed right up against the current.

Q. What was her condition—or what was the direction of her head when you left her?

A. She was headed right up the middle of the river; I could not steer her going down so rapidly, you see; she headed right into the current.

Robert S. Orkney, witness sworn on behalf of Libelant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. What is your business?

A. I am a Marine Engineer and Machinist.

Q. Where do you live?

A. No. 479 Annunciation street.

Q. Marine Engineer, is that your occupation?

A. Yes, sir; Marine Engineer and Machinist.

Q. If a position were offered you to-morrow, would you take it?

A. Certainly, that is what I am down there for, always; that is what I am in this world for.

Q. Where were you employed on the 27th of January last?

A. I was employed on the Argo.

Q. In what capacity?

A. Engineer.

Q. How long had you been on her?

A. I had been on her since about the latter end of November.

Q. What kind of machinery did she have?

A. She had what we call a compound keel condensor?

Q. What was the condition of her boiler and engines and the boat generally?

A. The engines and boiler were in first class condition.

Q. This—

A. As far as the hull is concerned, I never saw it in the dry dock, but as far as taking it from outward appearances it seemed to be in first class condition.

Q. Did you make the trip down the river on her at the time she was lost?

A. Yes, sir.

Q. Were you on watch at the time of the collision?

A. Yes, sir.

Q. Please state what you know and what you saw about this collision, and what occurred afterwards, in your own language?

A. We went down the river after we cleared Algiers Nothing happened until we got down below the Forts and we passed several steamers on the way going down. I heard the whistle distinctly, both our own and others and my attention was drawn to a cross signal that was given by this vessel we had the collision with. I didn't know what vessel it was, but previous to that I had come up from the engine room and looked out and I saw this tow passing, what looked to me like a tow, passing and I heard her whistle and I saw her and then I went below again and heard our Captain blow another whistle which I supposed was for another Steamer and then I heard two whistles blown which I thought was unusual, and I came up to see what it was, and I could see the white and green light on the vessel which I knew was wrong. It should have been a white and red light, then I halloaed out to the fireman, we are gone, I could see then we never could recover ourselves. It was a very short time between the time they blew the signals and I saw this light and I kept putting my head further up through the Companion Way.

I was not out of the engine room a second, no time hardly when I saw the loom of the vessel going right against our bow, then I saw the balance of her coming up out of the darkness. Immediately after that we struck her, and the concussion threw me down the engine room ladder which was about four or five steps. With the shock the engines stopped so I came up on deck again and I looked around and they were commencing to get the boat out and then I went down below again and looked around and saw her head pointing towards the bank.

Q. What vessel?

A. The Argo.

Q. I asked you towards which vessel?

A. I couldn't see the other vessel because she had gone passed us.

Q. Towards which bank was the Argo pointing?

A. That I couldn't say, I think she was pointing towards the west bank, the Algiers bank, because as she headed she would naturally swing that way.

Q. When you came up, as you have stated, and looked out and saw the Day Dream, or the Day Dream's tow—

A. I saw a tow, I didn't know what vessel it was.

Q. How far were you from that tow with reference to the bank of the river—were you close into the side the Day Dream was, or on the opposite side, or about the middle?

A. No. I guess we must have been about the middle, because we were so far away. I could make out it was a tow by the lights but I couldn't see the vessel at all.

Q. The night was clear?

A. Yes sir. It was a good night for seeing any lights.

Q. How soon was it after the collision that this Steamship Dumois disappeared, the boat that collided with you, did she disappear immediately?

A. Yes, sir.

Q. Was she stopped?

A. She could not have been stopped at the rate of speed she was going, because when we got in the boat we couldn't see her, she had gone up the river.

Q. Did she appear as if under way?

A. I should judge she was under way the way she was coming towards us.

Q. Was she coming slowly or rapidly?

A. She was coming rapidly because it was immediately after I saw the lights that she came right upon us.

Q. And after she struck how long was it before she disappeared?

A. Not ahalf a minute before she was gone, because we just crashed into her and scraped along her side.

Q. After she disappeared, what did you do then?

A. I rushed below and started the engines up when I saw her head pointing towards the bank, then I assisted them in getting the boat out.

Q. You mean you started the engines?

A. Yes sir, started them going.

Q. What was the purpose of that?

A. So as to try and beach her if possible. I saw that she was filling because her head was going down then.

Q. How did she go down, head foremost?

A. Yes, sir.

Q. After the boat was launched, or after the collision occurred, do you know whether or not the other persons that were aboard appeared on deck?

A. No, sir.

Q. You got in the boat, in the Yawl boat, you launched the yawl boat and all got in?

A. Yes, sir. I held onto the painter, took the bight of the painter and around the davit and held onto it until we all got in. You will find the davit in the pictures right opposite the engine room door.

Q. Then, what did you do?

A. Then I got in. There was one man came in after me, Mr. Lindaur, he was the last man in, the boat was then full. I asked the Captain to go in ahead of me so as to hold on to the boat if I had had let go the painter with a hook and block in there, she would have capsized. I asked him to go in the boat and hold on to it until I let go of the painter, then I got in.

Q. What did you do after that?

A. Then, we pushed her right right off because she was going down then. She was in the act of sinking when we shoved away, we had to use a little force to shove the boat away from the side of the Argo.

Q. She disappeared then?

A. Yes, sir.

Q. What was the next thing you did?

A. We halloaed to the vessel. We heard some voices aboard of the vessel although I couldn't see the vessel. I saw we were mid-way between the two shores and I proposed that we pull ashore, we didn't know which shore to go to because one was as far off as the other, then they commenced to halloa at the Steamer, she was backing down towards us.

Q. Then, when she backed down, how did they come, across the current?

A. No sir, with her head up stream.

Q. Was there any suggestion made which side you should approach?

A. Yes sir, they wanted us to go over on the starboard side and we halloaed that we couldn't, we were afraid to, because we didn't know wether the ship was under way or not and we wanted to get on the safest side, because the boat was filling.

Q. The wind was on the starboard side, too?

A. Yes sir, that wouldn't make the windward side the safest to go to, we wanted to go to the lee side.

Q. They changed the ladder?

A. Yes, sir.

Q. From the time the collision occurred and you got into the Yawl to the time that your Yawl arrived on the port side of the Dumois and you climbed up her ladder, had there been any boat lowered from the Dumois for the purpose of making a search or render any assistance?

A. I didn't see any.

Q. After you got aboard, was there any boat lowered?

A. After we got aboard while we were under way I saw a life boat hanging in the davit alongside, out of the water.

Q. Was any effort made or search made, by any of the Dumois people after the collision and after you got aboard?

A. I believe there was, I don't know personally, I went into the kitchen but I heard them speak that they were making a search.

Q. Did you examine the Dumois after the collision, after she got up the river here?

A. Yes sir, I saw her from the wharf.

Q. What damage, if any, did you notice to her?

A. There was only a little scratch mark as far as I could see and about two rivets loose.

Q. Were there any indentations along her side, where the Argo had scraped as the Dumois passed by?

A. I could hardly detect it. All there was was two rivets that they put in.

Q. Did they put them in there at that time?

A. Yes, sir.

Q. How do you know that?

A. Because I was working on her.

Q. Whom did you work for?

A. I was working for J. D. Connell.

Q. That was immediately after the collision occurred?

A. That was on the Monday following.

Q. What time did the boat get up here?

A. She got up here at half past nine the same morning.

Q. What day of the week was that?
A. I think it was Friday morning.
Q. And the following Monday—
A. The following Monday I went back to work for Mr. Connell, I always work for him.
Q. Now, then, Mr. Connell made the repairs?
A. To the Dumois, yes sir.
Q. Did you work on her yourself?
A. Yes sir, one day, and then I was transferred to the Espanol.
Q. Did you go inside of her hull?
A. No, sir.
Q. Where were you, on the outside?
A. I was working on the ventilators.
Q. Had the ventilators been damaged by the collision?
A. No sir.
Q. Where are they?
A. They are in the middle of the ship, where the engine room is.
Q. The work that was down at the point of collision, did you see it while it was being done?
A. Yes sir.
Q. And they were only two rivets put in?
A. Yes sir, that is what I saw put in.
Q. That was the extent of the damage?
A. That I saw, yes sir.
Q. Could there have been any damage that you couldn't have seen?
A. I hardly think so, if she had leaked any they would have known it then, that is all I know, that Mr. Connell did.
Q. Were there any indentations made in the plates, by the stroke?
A. It was very hard to detect, I think if it was painted over you could not see it at all.
Q. Mr. Orkney, what was the stage of the river at the time this collision occurred—was it high or low river?
A. It was not a high river, it was not what we call a high river. It was something like it is at present.
Q. Was there much current at that time, down where this collision occurred?
A. No, it was just a medium current.
Q. How fast?
A. I couldn't say.
Q. Have you been on the Argo considerably?
A. Yes sir.

Q. How far would she run when the steam was turned off? After you had shut off her steam?

A. She would run half a mile.

Q. Could an operation like this have been done aboard of her, for instance, suppose it was necessary to back her in a hurry, could you shut off her steam and immediately reverse her and give her a full head of steam again?

A. I ought to.

Q. What would be the result?

A. You see in doing that, her having such a speed on her, the momentum of the boat, the propeller, the engine wouldn't stop, her wheel would keep revolving and the engine would keep running after the steam was shut off.

Q. She would keep running ahead although the steam may be applied in the opposite direction?

A. No, sir; she would reverse but she would work so slow that it would have no effect in keeping her head-way and she would eventually do it in the course of a very few minutes, but not immediately.

Q. Would it have been prudent and stopped, shut off the steam, immediately and given her a full head of steam afterwards?

A. There wouldn't have been time to have done it, it would not have done any good.

Q. Have you any idea what speed she was making just previous to this collision?

A. I judge she was running about 18 miles an hour.

Q. About how many revolutions was she making?

A. I turned up 200.

Q. She was a very fast boat?

A. Yes sir, she was running ¾ speed.

Q. Between the time the Dumois gave her signal of two whistles and the time the boats came together, in that time could the Argo have been stopped?

A. From the time she blew—

A [Q..] The time that intervened between the glowing of the two whistles of the Dumois and the time the vessels struck could you have checked the speed of the Argo?

A. No, I don't think I could because the blowing of the whistle was too close into the time of the collision. My head was not up through the companion-way but a very short time when she struck.

Q. About how many seconds?

A. I don't suppose it was over, not a half minute.

Q. Even not that?

A. Yes, sir, about half a minute I should judge.

Q. Of the two boats, which blew the first signal, the Argo or the Dumois?

A. The Argo blew the first signal.

Q. That was one blast?

A. Yes, sir.

Q. What response was there to that?

A. He blew two.

Q. And then the next blast?

A. Then Captain Brown immediately blew one.

Q. Then what was the next?

A. The next was the danger signal from the Dumois but they were all so close together, there was very little time between them.

Q. Please look at this list of material amounting to $20.25 for which you have put in a claim here—please state whether or not that is correct?

(Counsel hands witness list referred to who examines same.)

A. That is not half of them, when I came to think about them afterwards I found there was more than that.

Q. Were those, there mentioned, on board, were they your property at the time the boat was lost?

A. Yes, sir, they were and many more than that, I didn't put down.

Q. The amount that is charged up here is $20.25. Is that a fair valuation?

A. Yes, sir, I consider it is.

Q. Were they lost by the sinking of this boat?

A. Yes, sir.

Cross-Examination.

By Mr. Grant:

Q. You were in the engine room at the time the Argo blew for the Day Dream, were you not?

A. Yes, sir.

Q. Were they not about opposite the Day Dream?

A. Yes, sir, because I opened the Companion door and I could see the tow, I didn't know it was the Day Dream, but I could see it was a tow opposite to her.

Q. You then went back into the engine room and closed the door?

A. Yes, sir, I went back and attended to my duties, oiled the engine and tried the water in her boiler and filled my pipe and sat down.

Q. How long was it after you went down that you heard the second signal given by the Argo?

A. It was not long, it didn't take me long to oil her, it wouldn't be over three or four minutes.

Q. There were three or four minutes elapsed between the signals?

A. From the time I went down until I heard the whistle blow again it may have been five minutes, I did't pay much attention to it.

Q When did you go again on deck?

A. Not until I heard the whistle blow again.

Q. Not until you heard the signal from the Dumois?

A. Yes, sir, not until I heard the cross signal, that was what brought me on deck.

Q. Then the Argo replied by another signal?

A. The first whistle she blew was answered by the Dumois? with two, then the Argo blew one again.

Q That is all the Argo blew?

A. Yes, sir, then the Dumois blew the toot whistle, that is, the danger whistle, but she was on top of us when she blew the danger whistle, she loomed right up, she was no distance at all from us.

Q. When you say you couldn't have stopped the Argo, you mean that you couldn't have stopped the Argo after you came up and saw she was so close?

A. Stopping would not have done any good, it wouldn't have stopped her head-way.

Q. Did you notice what lights were in view when you came up the second time?

A. Yes sir, I saw the bright white light and green light.

Q. On what vessel?

A. On the Dumois.

Q. Do you know how the Argo pointed at that time?

A. No, I don't know, I should judge she was keeping her course.

Q. You don't think she ported her helm?

A. I couldn't say of course, the engine room was away from the pilot house, I had no means of knowing.

Q. The Argo struck the Dumois at right angles?

A. It looked like it.

Q. Did that shock stop the engines of the Argo?

A. Yes, sir.

Q. Did you go back and start the engines going again?

A. Yes sir, the second time.

Q. How long did your engines work after you struck?

A. The engines were working when we left the boat. Her stern was out of the water and her wheel was still revolving

Q. When did the stern come out first?

A. When we were lowering the boat.

Q. How far were you then from the Dumois?

A. I couldn't see her then, she had gone.

Q. The Argo continued right down stream?

A. We couldn't tell where she was going, she was pointed towards the bank when I went down to start her up the second time.

Q. She didn't stop from that time until you got off of her?

A. No sir, she was still going like a hog rooting.

Q. Can you tell how long it was from the time the collision occurred to the time when you cast off the line of this boat with the men in it?

A. I should judge it was about three minutes.

Q. How long was it before you reached the Dumois you think?

A. About twenty minutes.

Q. You had no paddles?

A. We had two paddles but there were so many in the boat we could not use them; we were afraid to move for fear of capsizing the boat. We had hold of them—we had the tips of the ends of them in the water but it didn't do any good, we just managed to paddle over with them.

Q. You couldn't make any head-way against the current?

A. No sir, she backed down on to us and we paddled the best way we could.

Robert Orkney, witness recalled on the 25th day of March, 1897, on behalf of libellant, testified as follows:

Direct-Examination.

By Mr. De Gray:

Q. Mr. Orkney, you have already stated in this case that you started the engines of the Argo before you left her?

A. Yes, sir.

Q. Please state when it was—at what time, that you started the engines, and if you know, in which way the Argo was heading at the time you started them?

A. It was shortly before I got into the boat.

Q. Had the boat already been launched?

A. The boat was in the water. They were holding onto the painter, some of them were getting into the boat at the time I ran down below and started her up.

Q. Then they were in the boat?

A. Some were in the boat and some were on deck.

Q. They were on the deck ready to get in?

A. Yes sir.

Q. And then it was that you started the engines?

A. Yes sir, after I passed the painter to the Captain, the

Captain was in the boat and I passed the painter to him and went below and started the engines up.

Q. How did you happen to go and start them up?

A. I saw her heading towards the shore and I thought, with the suggestion that the Captain made, that we might beach her and save her, but we didn't know at the time that she was so badly damaged.

Q. How long was it prior to your shoving off from the boat?

A. We were in the boat three minutes from the time we hit, it must have been two minutes after we struck that I started her up again.

Q. Was it just prior to shoving off from her?

A. Yes sir. I went down and started her up, and when I started her I found that the crank was running in the water and I saw then that the boat was going down very rapidly and I hollered to all hands to get in the boat. She was sinking very rapidly and we had just time to get away from her.

Q. Was her head towards the western shore?

A. Yes sir, tending to go up stream.

Q. After you got in the small boat, how did she head?

A. She was heading towards the west bank with a tendency to go up stream, because we had a hard job to shove our boat away from her which showed her stern was going down on us, we were on the port side. You see when a vessel's helm is over the stern will always go round and we were on this side of her which made it difficult for us to get away, which showed her head was going up stream towards the current. Because when we got in the boat she left us.

Q. You couldn't say whether she was going up or down stream?

A. She was heading towards the west bank.

Q. She was heading up stream towards the west bank?

A. Yes sir.

Q. Do you know whether—do you know Mr. Jewett, this young man here?

A. Yes sir.

Q. Was he on the Argo at any time prior to this trip?

A. Yes sir, he was working on her, cleaning and oiling, he was oiler and coal passer.

A. Yes sir.

Q. He was not on board this trip?

A. No sir, because we got order to leave and I couldn't reach him in time to get him, he was on her the trip before.

Q. He claims a few articles of clothing?

A. Yes sir.

Q. Set forth in his intervening libel here—do you know—

two shirts one suit, working suit, pair of shoes, hat, cap and overalls?

A. Yes sir, I guess he had them.

Q. Do you know whether he had those thing on board at the [time] the Argo was lost?

A. They were there when she went down, because they were in her in the forecastle and I saw the cook had to move them out of the way.

Q. They were on the boat on this trip?

A. Yes sir, some were in the forecastle and some were in the engine room.

Q. Were they aboard when the boat was sunk?

A. Yes, sir.

Cross-Examination.

By Mr. Grant:

Q. They were all second-hand clothes?

A. No, he had his on shore clothes there.

Q. They had been worn, they were not new?

A. No sir, not new, I don't suppose they were bran new, some were his working clothes and some clothes were the ones he went ashore in. There were none of them new.

Samul Jewett,witness sworn on behalf of libellant, testified as follows:

Direct-Examination.

By Mr. De Gray:

Q. Had you been working on board of the Argo prior to her being lost?

A. Yes sir.

Q. How long before?

A. I was working there about a month or two right along here until she made the trip down the river.

Q. You were working on her up to the time she went down the river and was lost?

A. Yes, sir.

Q. That trip you didn't make?

A. No, sir.

Q. Did you have anything aboard her, effects?

A. Yes, sir.

Q. Please look at this list attached to your intervention and state whether that list is correct, whether those things were on board or not?

A. Yes, sir.

Q. What was the value of them?

A. The shirts there, they were worth about $1.50 a piece

and this here suit cost $15 new, and this here was a $10 suit, shoes were $4.00, hat $5.00 at one time, Cap and over-alls $2.00.

Q. Were they worth the amount specified there?

A. Yes, sir.

Charles Deseamus, witness sworn on behalf of libellant, testified as follows:

Direct-Examination.

By Mr De Gray:

Q. Where do you live?

A. 713 Brooklyn Ave., Algiers, La.

Q. Your business is towboating?

A. No exactly sir. I towboat, too, any way I can make a living, I try to make a living all around.

Q. Towboating is one the ways you make your living?

A. Yes sir, towboating, painting, laboring.

Q. Were you employed on board of the Argo at the time she was lost?

A. Yes, sir.

Q. What were you aboard of her?

A. I was deckhand?

Q. What time did you leave NewOrleans?

A. About ten minutes to seven.

Q. In the evening?

A. We were bound down o the jetties?

Q. Where were you bound to?

A. We were bound down to the Jetties.

Q. Where were you just before the collision occurred—on what part of the boat?

A. I was with Captain Brown, standing by his side on the bridge, that acted as the pilothouse, it is above the pilothouse.

Q. Did you pass any other boats before you came—before this collision occurred, a short time before?

A. Yes sir.

Q. What boats were they?

A. I couldn't say the names, sir; they were some steamers and I looked at the lights, one that I passed, there were some small crafts with it.

Q. Where were they, on what part, side of the river?

A. On the east side, New Orleans side.

Q. Whereabouts in the river were you when you passed these boats?

A. I should judge about the center.

Q. What kind of a night was it?

A. It was a clear night.

Q. Could you see the banks of the river? Without any difficulty?

A. You could see the trees, dark shade.

Q. When you passed this—you say you passed something on the left bank, east bank?

A. Yes sir, I thought it was the Day Dream or some of them small boats towing luggers?

Q. Did you give any signals to those boats?

A. Yes sir, I gave one—at least Captain Brown gave one to them.

Q. About that time did you notice any other lights anywhere, if so, where?

A. Shortly after we passed the last craft, I saw a light, I was on the lookout, I saw a red and white light.

Q. You were on the lookout?

A. Yes, sir.

Q. What bow of your boat did you see them over?

A. I saw them on my left hand.

Q. Over your port bow?

A. Yes, sir.

Q. Where was this red and white light that you saw, in reference to the bank of the river—what bank was it on?

A. On the New Orleans bank, on my port side.

Q. How far was it off from you when you first saw it?

A. About ¾ of a mile.

Q. Do you know whether or not Captain saw it the same time that you did, or about the same time?

A. I think he did, because as soon as I saw them I said Captain there is a vessel coming, he said yes, he waited a little while, I expected to hear the vessel blow, she didn't blow so he blew one blast of his whistle.

Q. What was the next thing that occurred?

A. About ten or 12 or 15 seconds afterwards, he blew we got and an answer of two whistles and as soon as we heard the two whistles Captain Brown blew one immediately, we got no answer and Captain headed to the Algiers bank and this vessel took a change and came across the river—

Q. She left the east bank and came across towards the west bank?

A. Yes sir, towards the west bank.

Q. When she came across, did she make any change in her lights?

A. Yes sir, I saw the green light and the masthead light as well.

Q. Was the red light shut out?

A. Yes sir, I saw the green light all through the change, when she was going across the river.

Q. As soon as the Dumois crossed the Argo's signal and the red light was shut out and the green light appeared, what did you do then?

A. I left the bridge and started back aft.

Q. For what?

A. To wake up the people, I thought there was going to be danger right there, I saw a ship crossing our signal and I ran aft.

Q. Did you call them?

A. I didn't go all the way aft, I stopped right at the engine room door, about mid-ships.

Q. How long did you stop there?

A. Maybe about two seconds, I just stood there and saw the ship then I run back aft right away, I don't think I was four seconds going from the bridge aft, and I hallaoed down below for them to get up quick, there was danger. As soon as I holloaed danger they struck, I didn't see her strike but felt her strike and fell towards the companion way of the cabin and was knocked down, I got up on my feet quickly and holloaed down below that she was sinking to get up quickly, and then I left the deck of the cabin for the Yawl boat. But the Dumois she had gone way beyond us.

Q. At the time she struck, had she stopped?

A. No sir, she went beyond us and kept on up the river.

Q. Did she disappear slowly or rapidly?

A. I tell you, from the time I got up on my feet and holloaed down the cabin the second time, to the time I got in the Yawl boat, I didn't see the Dumois, I don't believe I was much more than ten seconds doing that, hardly that, I didn't see no sign of the Dumois, our boat was sinking rapidly then.

Q. How did she sink, by the head?

A. Yes sir.

Q. I want you to be sure who was it that blew the first signal, was it the Argo or the Dumois?

A. The Argo.

Q. And that was responded to by a cross signal of two blasts—

A. From the Dumois, yes sir.

Q. Then Captain Brown blew one signal again?

A. Yes sir, immediately after the two were blown.

Q. Then she what, what signals did she blow?

A. I never heard any more at all until just about when I got amid-ships, well, before I got amid-ships when I was running I heard a lot of holloaing and a lot of whistles blown, from the

ship, danger signals I suppose they were blowing, I could hear some one hollaoing where the hell are you going, what are you doing, stop her, all this and that—that kind of confused me a little bit, that was what made me run towards aft to call the people up.

Q. You got the Yawl out in the water?

A. Yes sir. She was hanging on the inside of the davit and I pulled her on the outside and I believe the engineer and fireman lowered her. I was in the Yawl at the time they lowered her. I tried to lower her in the water but I couldn't because she was fastened on deck.

Q. Then you all got into the Yawl?

A. Yes sir, all there was that we could see was in the Yawl.

Q. Do you know whether or not the people that were aboard of her, got out of the cabin, the people whom you called?

A. As soon as I jumped in the Yawl and the Yawl was lowered in the water, I saw a crowd on the deck and then they all flocked in the Yawl. I had unhooked the fall and I got forward and handed the painter to the engineer who tied it to the forward davit, he was hollaoing for the painter and Mr. Frantz hollaoed he was aboard, I guess me meant me because I told him I was a painter as well as a deckhand?

Q. How soon did she sink after the collision?

A. I guess in about three or four minutes.

Q. You got in the Yawl boat?—

A. From the time she struck till the boat let go, I don't beliveve it was much more than four minutes and when we left the Argo there was no one on deck, I didn't see any one at all, I never heard any one halloa as soon as we left.

Q. After you got into the Yawl boat—could you see the bank of the river?

A. I could see the dark shade to the west bank, to the Algiers bank.

Q. Which bank were you closest to?

A. To the Algiers bank, the right bank going down, or west bank.

Q. You had—you got up alongside of the Dumois and were taken aboard and came to New Orleans?

A. Yes sir.

Q. Do you know whether or not there was any response to the call that you made down in the cabin for them to get up quick there was danger?

A. No sir, but I heard some scuffling down there, it was dark and I couldn't see, the lamp was out.

Q. You afterwards saw them come out on to the deck?

A. Yes sir, when I jumped into the Yawl boat and the Yawl

boat was lowered I saw the people then coming out of the companion way, and when we were about to leave the Argo in our yawl boat this Mr. Frantz, this undertaker, he had the oar and I thought that he would capsize the yawl and I said to Mr. Frantz, I said give me that oar, I can handle it better than you, he had the handle down in the water instead of the paddle, I took it away from him and rowed.

Q. Did you hear Captain Brown ask if everybody was aboard?

A. Yes sir, and when he asked that there was no answer to it and I heard some one, I couldn't say whether it was Captain Brown, the engineer or any of the crew, holloaing to let go and as soon as they hollaed let go I took the oar and shoved against the railing of the Argo and shoved the yawl away.

Q. When Captain Brown asked if every one was aboard, was he still on the Argo?

A. I can't say that because I was up forward, it was crowed then in the Yawl boat, I didn't see any one on deck at all back aft, I was looking aft on account of the Yawl boat, I thought perhaps she would go underneath.

Q. Please look at this list of goods, stated by your intervention as being aboard there?

(Counsel shows witness list referred to and witness looks at same.)

A. That is right.

Q. It amounts to $4.00?

A. Yes sir.

Q. Were those lost?

A. Yes sir, I never found them yet, they were in the forecastle.

Q. When she went under?

A. Yes sir.

Cross-Examination.

By Mr. Grant:

Q. You first saw the lights of the Dumois after the Argo had saluted the Day Dream?

A. Yes sir.

Q. How long after that?

A. How long after we passed the Day Dream?

Q. Yes.

A. It was shortly afterwards, I guess about 15 or, no, no it was about a minute I guess, we went about a mile beyond her, by the steam we had, it may not be quite that. I think the last vessel we passed was tied to the wharf, she tooted for us, we blew first then she answered.

Q. She blew after she passed the Day Dream?

A. No sir, she blew for the Day Dream.
Q. When did she blow for the Dumois?
A. After she had passed the Day Dream.
Q. That was as soon as she discovered her?
A. Yes sir, as soon as we saw her.
Q. As soon as you saw the lights of the Dumois?
A. Yes sir.
Q. How long did she wait before she blew the second time, the Argo?
A. As soon as she got an answer from the Dumois, immediately, as soon as she got it, the Dumois blew two whistles, as soon as she blew the two blasts Captain Brown blew his second whistle. When the Dumois blew two Captain Brown blew one immediately.
Q. Were you examined before the Board of Local Inspectors here?
A. I was examined in some office, I don't know where it was.
Q. Didn't you state in that examination, that you were standing alongside of Captain Brown when you first saw the lights of the Dumois?
A. Yes sir.
Q. And didn't you say that you then said to Captain Brown, she is showing on our starboard?
A. No sir, I did not. I said this to him when he asked me what side was that vessel off of us, I told him she was on my left hand side going down, we were going down and he was coming up, he was on our left hand side.
Q. Did you sign that deposition?
A. Yes sir, I think so, I wrote my name on the paper that they were asking me the question to.
Q. How long had you been on deck with Captain Brown that night?
A. On the bridge or around the deck?
A. [Q.] Around the pilothouse?
Q. [A.] Off and on, all night.
Q. You didn't stay there all the time?
A. I didn't stay by the Captain all the time, no sir, I would go down in the engine and warm myself, then I would come up on deck and look around and see if my lights were burning brightly, then I would go down and warm myself again.
Q. You were standing alongside of Captain Brown at the time you first discovered the lights of the Dumois?
A. Yes sir.
Q. What were you doing there?

A. I was standing there talking to him and keeping a look-out.

Q. How long had you been standing there?

A. About half an hour. I was just thinking about going down and warming myself then, just before the collision.

Q. It was a very cold night?

A. I should think so, there was ice all around us.

Q. Which way was the wind blowing?

A. It was blowing from our left, from the east bank, it was blowing towards us, well, coming towards our face, the side of our face, we were going down and it was over this way like, blowing behind us, it was blowing more down the river than it was up.

Q. How many luggers were there with the Day Dream?

A. I couldn't say sir.

Q. You know she had some?

A. I couldn't say even that, I couldn't say if she had luggers or what she had.

Q. Could you see that she had tows of some kind?

A. Yes sir, she had some tow with her.

Q. Do you know how many?

A. No sir.

Q. She was under way when you saw her first?

A. Yes sir, she was under way I think, or may be she was tied to the wharf, I couldn't say whether she was under way or tied to the landing there.

Q. What lights did she have out?

A. The red light.

Q. Did she have a green light also?

A. I didn't see the green light when I noticed her.

Q. Did she have any mast head light out?

A. No sir, I didn't see any mast light, I only saw one light and that was a red light, I saw little lights in the cabin, that was the reason I knew the vessel was lying—

Q. Near by the Day Dream?

A. No sir, the lights were on the Day Dream.

Q. Did you notice any lights on the luggers?

A. No sir, a bright white light might have been on the luggers or whatever she had in tow.

Q. But you didn't see and bright white light?

A. No sir, no big bright white light. I saw some small lights showing through a pane of glass, looked like cabin lights.

Q. At the time that Captain Brown ported the helm of the Argo, what lights did you see on the Dumois?

A. I saw a red light.

Q. You saw a red light?

A. Yes sir.

Q. How long before the helm of the Argo was put to port, did you see that red light?

A. About ten or twelve seconds, less than that, less than that sir, that was just before I jumped from the bridge.

Q. The red light was in sight before Captain Brown sounded the first signal?

A. Yes sir, it was in sight, I saw it plainly and I told Captain Brown then, there is a vessel coming up stream, I believe he said yes, just like that, and he waited a little while, she didn't blow then he blew one blast of his whistle and after he blew his blast, there was a little time between, then the Dumois blew two blasts, and then Captain Brown immediately, when the Dumois finished blowing her two whistles Captain Brown blew one right away, then I jumped from the bridge I knew there was danger in sight then.

Captain Brown, witness, re-called on behalf of libellant, testified as follows:

Direct Examination.

By Mr. Springer, Libellant:

Q. Who was it that had charge of this expedition?

A. Mr. Hester.

Q. What, if anything, did Blesini have to do with it?

A. He was one of the representatives of the Picayune, there was a charter-party.

Q. Who told you to stop and start and where to go and when to go and where you were to land and all that sort of thing?

A. Mr. Hester,

Q. Who had the direction and control of the boat?

A. Mr. Hester.

Q. And the management of it?

A. Mr. Hester.

Q. Suppose Mr. Hester had told you, after you had got down the river ten miles, to return to the city, what would you have done?

A. I would have come back.

Q. Were you or were you not, then, subject entirely to his direction and control?

A. I was under his orders, yes sir.

Q. Who provisioned the boat, who was to pay for the provisions on the boat? Provisioning the boat?

A. The Picayune office.

Isaac Broadhurst, witness sworn on behalf of Libellant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. What is your residence—where is your home?

A. Dubuque, Iowa.

Q. What is your business or occupation that you follow?

A. Caulker and ship carpenter.

Q. Sometimes a sailor?

A. Yes sir.

Q. When does business revive in the section of the country from which you come?

A. The latter part of this month—March.

Q. Do you expect to go back?

A. Yes, sir.

Q. You expect to go to your home?

A. Yes, sir.

Q. When you were aboard of the Argo—or, for instance—how soon do you expect to go home?

A. I don't know when I will go; it is according to circumstances.

Q. You are likely to any time?

A. Yes, sir.

Q. Were you on board of the Argo at the time she was sunk and lost?

A. Yes, sir.

Q. In what capacity were you on board of her?

A. Fireman.

Q. Please give us, in your own language, what you know about this collision, and anything that immediately occurred before it and the collision itself—state it in your own language just as plainly and succinctly as you can?

A. You want me to start from the time—

Q. Where was the Argo at the time—state when you left Algiers and what point were you bound for?

A. I couldn't tell the full trip down; I can tell the time we had the collision.

Q. Yes.

A. We left Algiers on the evening of the 27th, and some time between 12 and 1 o'clock I heard the Captain signal to pass a boat; he blew a signal blast of the whistle, and shortly after he blew that one he blew another, one blast, and shortly after that the shock same; that is all I know about it, that is all I can tell.

Q. You were down in the hold all the time?

A. Yes, sir.

Q. In the fire room?

A. Yes, sir.

Q. After the shock came, did you go up?

A. Yes, sir.

Q. Then what did you see?

A. The first thing I saw—I looked forward and I saw the Dumois—I didn't know it was the Dumois then—I saw a steamship lying across our bow, lying right square across it.

Q. Lying still or coming up the river?

A. Coming across our bow up the river.

Q. Did she disappear rapidly?

A. Yes, sir; I didn't have much time to look after her; she went out of my sight.

Q. Then what did you do?

A. I got orders to lower a boat, and I went to the after tackle of the boat and the engineer went to the forward tackle and we lowered the boat in the water.

Q. And thereafter you got in the boat?

A. No, sir; I didn't get in the boat, there were three or four in the boat before I got in her.

Q. Do you know whether or not the people that were in the cabin came up on deck before the boat sunk?

A. Yes, sir; I saw them all on deck.

Q. Was Blesini and Hester there?

A. I saw four men on deck aft.

Q. Besides your own crew?

A. None of the crew was back there; there was four men on deck and they were present themselves.

Q. How long was it from the time the collision occurred until the Argo disappeared?

A. Between three and four minutes.

Q. You had no more time, then, than to get the boat lowered and get in her?

A. Yes, sir; we just had time to get away ourselves; we had no chance to go around the boat and search for anybody.

Q. When you got in the boat and pushed away from the Argo, did she go down very soon after?

A. Yes, sir; we hadn't got more than 100 feet before she went down.

Q. Out of sight?

A. Yes, sir.

Q. At that time, where was the Dumois—could you see her?

A. No, sir; we could hear her engines working, but we couldn't see her.

Q. She was up the river?

A. Yes, sir; up and across.

Q. How far up was she?

A. I should say half a mile.

Q. While you were in the small boat, in the yawl boat, could you see the banks of the river on each side of it?

A. I could see the bank of the river before we left the Argo, as soon as my eyes got rid of the glare of the fire room I could see the banks.

Q. In what part of the river was the Argo then?

A. About the center.

Q. She was about the center of the river?

A. Yes, sir.

Q. After you got into the small boat, could you see the bank of the river then?

A. I didn't pay any attention to it.

Q. Are you prepared to state what point in the river the collision occurred, whether it was on the western bank or the eastern bank or in the middle of the river?

A. I am prepared to say that we had no time, from the time that I could see, until the collision occurred, we had no time to change our position in the river, so it must have been very near the middle of the river.

Q. You have attached to an intervening libel here a list of some articles which you say you lost, amounting to $41.40?

A. Yes sir.

Q. Please look at that and state whether or not you had those articles aboard and lost them and whether the amount charged is reasonable amount for the goods you had?

(Counsel shows witness list referred to and witness examines same.)

A. That is correct.

Q. Are those all the clothes you had on board of her?

A. Yes, sir; those were all I had aboard of her.

Q. Were they lost?

A. Yes sir.

Cross-Examination.

By Mr. Grant:

Q. Did you hear any danger signals before the collision?

A. No, sir; I did not.

Q. Did you hear any signal from the Dumois?

A. No, sir.

Q. Do you know where the Argo was when you heard the first whistle?

A. No, sir; I don't know where she was when I heard her first whistle.

Q. Do you know where she was when she gave the second whistle?

A. No, sir.

Q. How long was it before you came up, after the second whistle was heard?

A. After the second whistle—I don't suppose it was more than a minute.

Q. Where were you then in the river?

A. We were in the center when I could get my sight; I couldn't see when I first came up.

Q. Did you come up any time before the shock, or about the time the shock took place?

A. I was up about half an hour before that.

Q. No, no; but I mean before the actual collision occurred?

A. No, sir.

Q. Did you come up before that collision occurred or after it occurred?

A. After it occurred.

Q. And it was not until you came up on deck that you were able to observe the situation?

A. Yes, sir.

By Mr. De Gray:

Q. You were not paying much attention at the time at all?

A. No, sir; I know it was after 12 o'clock—just shortly after 12.

Q. I mean, the length of the time between Captain Brown's second whistle and the time the boat struck?

A. No, sir; I was too busy.

Q. When the collision actually occurred you were—

A. I was in what you call the fire hole in the vessel.

Q. You were knocked down by the force of the collision?

A. Yes, sir.

TESTIMONY OF CAPT. BAZILE JURISCH AND EDWIN C. GREEN, FOR LIBELANT,

Taken on the 16th Day of March, 1897, before Frank H. Mortimer, U. S. Commissioner. Filed Dec. 16, 1897.

Appearances:
R. De Gray, Proctor for Libelant.
Rouse & Grant, Proctors for Claimant.

Captain Bazile Jurisch, witness sworn on behalf of Libelant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. Where do you live?

A. I live on Barracks street.

Q. What is your business?

A. I am in the oyster business.

Q. In your oyster business did you own and run a lugger?

A. Yes, sir.

Q. What is the name of your lugger?

A. The Admiral Take it Off.

Q. Where was that lugger and where were you a little after midnight, or about midnight, on the 28th of January last?

A. I was about 80 miles down the river, right below the New Canal, about 100 or more feet, I don't know exactly, alongside of the Tug Day Dream.

Q. Were you inside or outside of the Tug Day Dream?

A. I was on the outside.

Q. How close were you to the shore?

A. I was from the shore about—the Day Dream she was making a landing—I was from the shore—I don't like to make a mistake—about 50 feet, I guess, from the bank;I don't think—I guess about 50 or 40 feet from the bank.

Q. What kind of a night was it?

A. It was a cold night, and clear.

Q. Did you notice any steamers that came down the river while you were there?

A. Yes, sir; I saw the steamer coming down the river, and he blew one whistle, I think that was for the Day Dream, and the Day Dream answered him by one whistle.

Q. Then, did he pass on down—in what part of the river was he, could you tell?

A. The boat coming down the river?

Q. Yes.

A. I wouldn't swear, but I think he was coming right in the middle of the river, the way any other steamer would come down. After a little while he blew another whistle again. He was a little more to the east, but like any other steamer, about in the middle of the river, a little more to the east, may be, a little more.

Q. Then you say he blew another whistle?

A. Yes, sir; then I looked down the river and I saw the steamer coming up in the river on the east side of the Mississippi River; I didn't hear any answer from the steamer.

Q. From the steamer going up from the east shore?

A. Yes, sir; then, after a little while I heard four whistles that the steamer was blowing; then she was a good distance out in the river, you know; then I saw the little boat coming down, blew four whistles; then after that I saw the little boat hit the big boat on the right side on his bow, I saw the little boat hit the big boat on the right side of his bow.

Q. About what part of the river were they when they came together?

A. They were about, right little below where I was.

Q. No, no; but I mean with reference to the bank—were they in the middle of the river, or near the east bank or near the west bank?

A. They were about in the middle of the river, a little more, may be, to the east side.

Q. I mean when they struck?

A. About in the middle of the river, a little more to the east side; that is all I know about it.

Q. How long—after they struck how long did the little boat remain afloat, do you know?

A. I can't tell nothing about that; if I knew about that I would go with my lugger outside.

Q. Did you notice the lights of the big steamer after they struck, as to whether she stopped or whether she went on up the river?

A. The steamer drifted down the river.

Q. Yes, after the collision?

A. Yes, sir.

Q. But just as they came together, what became of the big steamer?

A. The way I gave you my statement there (witness refers to some statement given to the proctor by him).

Q. The big steamer was crossing the river?

A. Yes, sir.

Q. Was the big steamer crossing the river at the time the two boats came together?

A. Yes, sir; she was crossing the river.

Q. And the little steamer was coming down the river about the middle?

A. Yes, sir.

Q. And the big steamer was crossing from the east side to the west side?

A. Yes, sir.

Q. Is it not true that the big steamer crossed over in front of the course or bow of the little steamer coming down?

A. I don't know anything about the rules.

Q. That is not the point—but you say the big steamer was crossing the river?

A. Yes, sir.

Q. Going from the east side towards the west shore?

A. Yes, sir.

Q. And the little steamer was coming down in the course—

A. Yes, sir.

Q. The way the steamers come down?
A. Yes, sir.
Q. What I ask you is this—while the little steamer was coming down the river on her course, wasn't the big steamer crossing over the river in front of the little steamer?
A. In front—yes, sir; sure.
Q. How long have you lived down there on the lower river?
A. I make every week a trip.
Q. You make a trip every week?
A. Yes, sir; when it is my business, from the month of August to the month of February.
Q. You are familiar, then, with that country there, are you not?
A. Yes, sir; I sure was.
Q. You know the river well?
A. So, so, well.
Q. Along the bank of the river, the east bank, what kind of a bank is it, below the Canal—you say you were lying about how many feet—
A. About 50 feet from the shore.
Q. And how many feet below the New Canal?
A. About 100 or more feet.
Q. How is the bank from there down the river, is it steep bank or is there a batture?
A. There is no batture.
Q. It is a steep bank?
A. Yes, sir; there is plenty of water there.
Q. How do steamers coming up the river generally come along in that section?
A. It depends on the wind.
Q. How was the wind blowing this night?
A. It was blowing north, northwest, I guess.
Q. Would that take it across the river?
A. Yes, sir.
Q. Where would a steamer be on such a night in such a wind—would she be on the east side or not?
A. That is not my business. It depends, the pilot some times.
Q. Is there any trouble, as far as the depth of water is concerned, in a man coming with a steamer on the east bank?
A. No, sir; I don't think there is any trouble.
Q. How much water is there?
A. There is plenty of water there.
Q. Well, how much?
A. I can't tell you that.
Q. How many fathoms, do you suppose?
A. How far from shore?

Q. Say 100 feet.

A. I guess about—

Q. Did you ever throw a lead there?

A. No, but I can calculate; about 100 feet from the shore is about 5 or 6 fathoms on that shore, sure, or more than 5 or 6 fathoms.

Q. How far away, or rather, how close to the bank was this steamer that you saw coming up the river?

A. I can't tell that exactly; I don't know exactly, but I know he was coming up on the east shore, I can't tell exactly—

Q. Well, about?

A. About, I guess, like any other steamer you know, like any other steamer coming up.

Q. And he was coming up along that bank?

A. Yes, sir; when I first saw her.

Q. When the little boat, the Argo, the little boat—after she had passed the Day Dream and gave one blast of her whistle, what did the boat that was coming up, what did the steamer do that was coming up on the east shore—did she turn out in the river then?

A. I never took notice then; when the little boat blew another whistle I looked down the river and saw the steamer coming up, so I never heard no answer from the steamer, so I didn't pay any more attention, when all at once I heard the steamer blow four whistles, when the steamer was a good distance out in the river; she was crossing over.

Q. Then she had already changed her course from the east bank out in the river before she blew these four whistles?

A. Yes, sir; she was out in the river and crossing.

Cross-Examination.

By Mr. Grant:

Q. Are you a pilot?

A. No, sir.

Q. You sail your own little lugger on the river?

A. Yes, sir; I am master of my boat.

Q. You are usually towed up the river?

A. Yes, sir; sometimes, sometimes sail up, sometimes towed.

Q. You are not a competent pilot, are you, in the Mississippi River?

A. No, sir; I am not a pilot; I have no papers as pilot.

Edwin C. Green, witness sworn on behalf of Libelant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. What is your business?

A. My business is Cook and Steward.

Q. Where do you live?

A. I live No. 329 Newton street, Algiers.

Q. You are cook and steward on the river?

A. Yes, sir.

Q. And liable to go away from home at any moment, are you not?

A. No, sir; up and down the river.

Q. I mean you are liable to be out on the river on a boat?

A. Yes, sir; I am liable to be away from home during the day—some times up and down the coast for a few days, some times I am away for a fortnight.

Q. Do you remember the Argo?

A. Yes, sir.

Q. Do you remember leaving on board of the Argo from Algiers on the 27th of January last?

A. Yes, sir.

Q. To make a trip down to the Jetties and back, I believe.

A. Yes, sir; somewhere in that locality.

Q. Do you know what time of day you left?

A. We left about a quarter to seven o'clock.

Q. In the evening?

A. Yes, sir.

Q. What time did you retire that night?

A. I didn't retire at all.

Q. Were you up all night?

A. Yes, sir; I simply laid down; I didn't go to bed; I simply laid down to take a little rest to be ready for the fray the next morning.

Q. You remember there was a collision on that trip between the Argo and the Albert Dumois—do you remember that?

A. Distinctly.

Q. Were you awake at the time the collision occurred?

A. Yes, sir; and before, too.

Q. How long had you been awake before it occurred?

A. I was awake all night; I hadn't been asleep at all; I was just lying down.

Q. Did you have any information or any intimation that a collision was about to occur, before it did occur—in other words what did you know, if anything?

A. I knew nothing; I had no inference at all that there was going to be a collision, or anything of that kind.

Q. Just prior to the collision, did you hear any whistles?
A. Yes, sir; I did.
Q. What whistles did you hear?
A. The first whistle I heard was the Argo.
Q. What did she blow?
A. She blew one blast of the steam whistle to go to starboard.
Q. Was there any response to that?
A. Yes, sir.
Q. What was the response?
A. Two whistles.
Q. How soon after did the response come, after the Argo had blown the one whistle?
A. It was inside of a minute.
Q. Well, then, were there any more whistles blown?
A. Yes, sir.
Q. What were they?
A. The Argo blew one blast again.
Q. Was there any response to that?
A. Yes, sir.
Q. What was it?
A. Two, and then 3 short whistles on top of it, or 4, from the other vessel.
Q. Where were you precisely when these whistles were being given by these two boats?
A. I was standing in the hatchway that led down to the dining room and kitchen, there was a pair of steps that led all the way down and I was on the top step with my head out of the trunk looking out when the second whistle was blown.
Q. You mean when the two blasts were blown—when the Argo blew the second blast do you mean?
A. That brought me to the top of the stairs.
Q. You understood then there had been a cross signal?
A. Yes sir. I knew a cross signal had been blown and I knew there was something the matter and I was looking out for myself.
Q. You came then where you could see?
A. Yes, sir.
Q. Well, what was it you saw, just tell us in your own language?
A. I saw that there was a Steamer coming up the river, apparently crossing the river and I saw that our boat was bearing right down on to the vessel or that the vessel was bearing right down on to ours, either one or the other, I furthermore saw—it looked to me, the way it loomed up, that a collision was inevitable.

Q. And then it occurred shortly afterwards?

A. Yes sir, shortly after that it did occur.

Q. Your judgment was right then?

A. Yes sir.

Q. Well, now, do you remember what light you saw on the approaching Steamer when you looked out and saw her first?

A. Yes sir, I do.

Q. What was it?

A. I saw them all, I saw the high light.

Q. Then the green light?

Q. [A.] I saw the high light, the mast head light, I saw both signals distinctly on the steamship Albert Dumois. I saw both red and green lights.

Q. When she crossed over the river, as you have stated, and before the collision occurred, she shut out her green light, did she not, or red light, which was it?

A. The red light was gone, her port light was gone in a jiffy, I saw them both when I looked out and then I never saw nothing after that but the green and high light, and I saw the loom of the vessel on top of that.

Q. How long have you been occupied on the river?

A. I started in 1866 on the first day of January, down in this coast on tug boats.

Q. You are familar, then, with the lights of a Tug Boat and of a Steamship?

A. Yes sir, I know them very well.

Q. When you first saw, as I understand then, when you first looked out and saw, after the signals had been crossed you saw this other steamer and you saw her mast head light and both of her signal lights, is that right.

A. That is correct, yes sir.

Q. Then, almost immediately after that, she shut out her red light?

A. That is right.

Q. And you then saw nothing but the green and mast head light?

A. That is right, exactly.

A. Yes sir, that is what frightened me, it didn't frighten me exactly, but it brought me to my senses, that is why I went aft on that vessel to rouse those people that were sleeping in the cabin.

Q. What would that indicate to you when you first saw her three lights and then saw her red light shut out and only seeing her green light would or not that indicate to you that she had changed her course by crossing the river?

A. It indicated that either one of them had changed its

course, one or the other, because the light shut up that quick, the one darkened in an instant that way.

Q. Was it before the shock occurred that you called these people in the cabin, or afterwards?

A. Just as the shock occurred I just managed to gain that far over the slippery deck boards, I was bound to slip over that ice, but I got there just as the shock occurred and shoved open the doors of this cabin and made a rush into the cabin and caught hold of two gentlemen and hollered at the top of my voice to get up quick, I caught one by the leg and the other by the arm.

Q. Do you know what gentlemen they were?

A. One man was by the name of Lindaur, I certainly pulled him by the arm, but the other gentleman that was sleeping next to the stairway, was a newspaper reporter by the name of Hester.

Q. Did you wake him?

A. I pulled him by his leg and got him to his feet, and the other Mr. Frantz, the other two gentlemen they apparently jumped up.

Q. Mr. Frantz and Mr. Blessini?

A. Yes sir, I think that was his name, I am not positive, Blessini that was him. But Mr. Hester, the reason why I know that was his name is because he was the Champion of the party and made himself very familiar.

Q. Did Hester have charge of the expedition, of the trip, going down the river?

A. He appeared to have charge of that party.

Q. That is what I mean?

A. Yes sir.

Q. Who was it you say—you were getting to call somebody —did you have any directions from anybody at the time you woke these people?

A. Not a soul, from nobody but myself, all the directions that I had was, when we met with the Steamship Whitney, when we got alongside of her, was to make them a sandwich and a strong cup of coffee and I promised them to do so.

Q. Who requested you to do that?

A. Mr. Hester.

Q. He was the man that gave you the directions as to what he wanted done for that party?

A. Yes sir. He said Uncle Ned, if anything should happen let us know, them were his last words to me.

Q. After you called them, do you know whether those four people got out on deck, do you remember that?

A. I can recall the fact that every one of those four people that was in that cabin, came on deck, they came all in a huddle jamming one against the other. I went alongside the rail to see

how fast she was going, to see what time we were making.

Q. She was going down by the head?

A. Yes sir, that is what I went to watch, and I looked around and I saw them all come out there. I think Mr. Frantz went back and got his overcoat, I am not positive that he did, but the others were thinly clad in their undershirt and drawers; I know that they went back in the cabin, but I don't know that they came out again, but I do know that first time they did come out.

Q. They were all out on deck before the boat sunk?

A. Yes sir, properly notified by the Steward, Edwin C. Green, that is me.

Q. After you saw the Argo was going down rapidly by the head, there was then the yawl boat got out, I believe?

A. Yes sir, a small yawl boat.

Q. After the collision occurred, after the Argo had struck the Dumois, what became of the Dumois?

A. What became of her?

Q. Yes?

A. As far as I know—I think she stopped her engines and drifted around there in the river, after she lost her headway. I couldn't say whether she backed or went ahead, I wasn't on board to know.

Q. Didn't she—

A. She went by there like a railroad train after we struck, it was not two seconds when we saw her back—

Q. She was going so fast?

A. —— we passed right under her stern counter.

Q. She wasn't stopped?

A. I don't know whether she was going ahead or backing her propeller.

Q. But she was disappearing up the river?

A. Yes sir, at a great rate of speed.

Q. Could you tell how far she had gone before she stopped?

A. She disappeared in the dark, you couldn't see her as far as the loom of the vessel was concerned, but you could see the lights of her cabin.

Q. How far up the river was it before she apparently stopped—lost her headway?

A. I couldn't say. By the looks of the lights I should judge—

Q. Was she the width of the river?

A. —— she was five or six furlongs, quarter of a mile, probably further than that; a man can't tell in the dark that way.

Q. I ask you for your best judgment?

A. A half-mile, maybe; might have been over that, five or

six furlongs; it couldn't have been over a half a mile, though, I don't think that far.

Q. How long did the Argo float after the collision occurred?

A. Just about four or five minutes.

Q. And you only had time, then, to get in this boat?

A. In four or five minutes you have time to do a great deal.

Q. You had time to get the yawl boat out and get in her?

A. That's right.

Q. How far had you got away from the Argo before she disappeared?

A. We just had got far enough to clear her suction. I suppose as far as from here to the end of this room.

Q. How long were you afloat in the water? How long was the small boat in the water before the Dumois backed down to you?

A. We paddled around there I guess for 20 or 25 minutes.

Q. Was there any boat lowered from the steamer, the Dumois?

A. No, sir; not a boat. They never came after us, although we hollered at the top of our voices, because we thought we might be swamped—no boat ever came to our rescue.

Q. Did you hear noises from anybody apparently in the water after the Argo went down?

A. I heard noises, but I couldn't say whether the noises came from voices, from men in the water or from men hollering on the Dumois; it sounded that way, but I heard noises; I heard somebody hail me like men shouting. I couldn't understand what they were saying, but they were making a heap of hubub; I heard that distinctly.

Q. What side of the Dumois did you go up on; what side was her ladder on?

A. The Dumois was almost parallel with each bank; she was about crossways, almost, quartering a little in the river, and we got aboard of her on the port side under the forward quarter.

Q. Mr. Green, at the time that you heard the cross-signal and you looked out, could you tell in what part of the river the Argo was; whether she was in the middle of the river or whether she was near the eastern bank or near the western bank?

A. She appeared to me to be in the middle of the stream, or might be, according to my idea, a little closer to the west bank than to the eastward.

Q. After the collision occurred—

A. But to the best of my knowledge, the night was clear—

Q. You could see the banks?

A. I could see either bank; I could see a long ways.

Q. Now, after you got into the yawl boat and the Argo had sunk, could you see the banks of the river then?

A. Yes, sir; we were closer to the west bank than to the east bank, and we started for the west bank, it being the closest, to try to get there with the yawl boat.

Q. Because that was the nearest shore?

A. Yes, sir; that was the suggestion, that we pull for the bank in the first place; then we came to the conclusion that we couldn't make the west bank, but we were a little closer to the west bank than to the eastward.

Q. And that was your position in the river about the time you were picked up and taken aboard of the Dumois?

A. Yes, sir; to the best of my judgment. If I had been myself a pilot there is where I know she would be; I just know she was in the middle of the river; might have been a little closer to the west bank.

Q. As I understand you to say, you have been running up and down this river on towboats since January, 1866?

A. That is what I have, exactly; running up and down the river, out to sea and back again; all about, jammed over the bar, ever since 1866.

Q. Then you are very familiar with the river between here and the bar?

A. Yes, sir; I know this minute, if I was called before the Board of Local Inspectors right now, I could go before the Board and get a pilot's certificate.

Cross-Examination.

By Mr. Grant:

Q. Where were you when you heard the first signal from the Argo?

A. The first signal that I heard, I was sitting by the stove on a chair by the stove in the galley, just the same as I am sitting here, close up to the stove.

Q. The galley is enclosed?

A. Yes, sir.

Q. It is generally—

A. It has been lying down—

Q. Is it at the end of the cabin?

A. It is on the forward end, apparently the forward portion of the boat.

Q. It is entirely covered in?

A. It is entirely covered in; there is a roof over all of it; windows, transoms on either side with one door, steps leading up to it.

Q. It was a pretty cold night?

A. Yes, sir; it was a bitter cold, freezing cold.

Q. The wind was blowing hard?

A. No, sir, not very hard.

Q. You went up on deck to look around when you heard the first signal?

A. I did not.

Q. When did you first go up?

A. I went on the stairway and looked out; I didn't put my foot on deck. I stood on the steps and looked out.

Q. You had a view all around from the steps?

A. Yes, sir; I had a view all around the river ahead of me.

Q. How long did you stay there?

A. I don't know; I staid there a very few seconds; not long.

Q. Then you went down into the galley again?

A. I went right down to put some coal in the stove.

Q. How long did you stay there then?

A. I hadn't more than got the plate off the stove before I heard that cross-signal.

Q. What did you do then?

A. I went back there again and looked out from the same position.

Q. Then you saw the three lights; the first time you saw the two lights?

A. No, sir; I saw the three lights when I first went out, and I thought we were all right, and I went back to put some more coal in the stove.

Q. What lights did you see when you went out the second time?

A. I saw the green and the high lights, mast head light.

Q. Was there a light on the mast head?

A. I don't know whether it was in the mast head or whether it was on the chains, but it was high; I don't know exactly where it was swung at.

Q. It was high up?

A. Yes, sir.

Q. It was then that you went down to wake up the people who were in their berths?

A. As soon as I saw that green light the second time, yes, sir; and just shot back there as fast as I could put.

Q. Did you hear any response to the two signals of the Dumois, from the Argo?

A. She answered her with one again.

Q. Then the Argo only blew two signals?

A. That is all that was blown aboard of the Argo, all that I heard, two signals for passing.

Q. Did the Argo blow any signals for the Day Dream?
A. I didn't hear any.
Q. You didn't hear any signals for the Day Dream blown by the Argo.
A. No, sir.
Q. Where were you then?
A. I was in the galley, sitting on a chair.
Q. You were sitting in the same place you were when you heard the signal for the Dumois?
A. I heard signals blown, but I couldn't tell whether it was for the Day Dream or the City of Paris; I don't know about the Day Dream business at all.
Q. But you are certain, about that time, you only heard two signal blasts of the whistle?
A. That is, for the ship we got in trouble with, I can swear to that.
Q. I am just asking—you are certain that you only heard the blast of the Argo's whistle twice?
A. Between the Dumois and the Argo?
Q. Yes.
A. Yes, sir; that is all that was blown on her.
Q. Did you hear any before that?
A. Yes, sir; because we just had met a vessel a little before that.
Q. How long before that?
A. About ten minutes, may be 15 or 20 minutes, something like that.
Q. What was the vessel that you met then?
A. We had met a vessel bound up, but I don't know what boat it was; I never looked out to see.
Q. Then you never heard any more signals from the Argo than the one you heard when you came out of the Galley?
A. Nothing would have brought me up those cold steps except that cross-signal; nothing but a cross-signal would have brought me out; I knew something was the matter.
Q. You came out when the first signal was sounded?
A. I did. I didn't come out, I didn't say I came out, I said I looked out.
Q. Yes, I know what you said. There is no use to trifle that way; you know what I mean?
A. I don't understand when you say trifling, that portion of it.
Q. I asked you whether you came out of the Galley when the first blast of the whistle was given by the Argo?
A. No, sir; my dear man, on my honor I did not.
Q. Well, what did you do?

A. I came up on the steps and looked out.

Q. You call that staying in the galley, I suppose?

A. Yes, sir. If I could illustrate that I could—

Q. I don't want any illustration; I want your answer.

A. May it please, I stood on that stairway with my body down in there, a portion of it, and these doors I will explain to you and won't trifle.

Q. I don't want you to explain anything—your head was up above the deck?

A. That's the idea, that is it exactly.

Q. Then you came up out of the galley?

A. You can put it that way if you want. I don't want to trifle with the Court or anything of that kind, I am not here for that purpose, I came here to tell you exactly what I know about this matter and no more.

Q. You didn't come up on deck even when you heard the cross-signal?

A. No, sir. I never went on deck until I made a shoot to wake those people up; I stood on the stair way.

Re-Direct Examination.

By Mr. De Gray:

Q. Please look at this picture here. We have got a picture of the Argo (counsel shows witness picture referred to), do you recognize it as the picture of the Argo?

A. (Witness examines picture referred to). Yes, sir; that is a complete picture of that little boat.

Q. Whereabouts was it that you put your head out?

A. I put it out right out here.

Q. That is, out of the door that is now open and immediately abaft of the pilot house?

A. Yes, sir; but recollect when I put my head out, those doors were shut up; I put my head out of the trunk that slides back; those doors were shut on account of its being so bitter cold. I put my head out of this here trunk leaning on those doors, looking out.

Q. Then you went back again?

A. That is my statement there. I said that half a dozen times.

Q. When you first heard the Argo's whistle you looked out, you got up on the step and looked out?

A. That's right.

Q. But you didn't go out of the galley?

A. No, sir.

Q. And then you went back again and put some coal in the stove?

A. I went back to do it, but—
Q. And you got the lid off the stove?
A. That's right.
Q. Then you heard the cross-signal?
A. That's the idea.
Q. Then you came back?
A. Yes, sir.
Q. And went on deck?
A. I didn't go on deck, I came on the top of those steps.
Q. You came on the top of the stairs?
A. Yes, sir; and looked out and saw only the green and high light.
Q. And saw the red light had disappeared?
A. Yes, sir.
Q. Then you were afraid there was going to be a collision?
A. I knew it was inevitable; then I shoved them doors open and rushed on deck.
Q. When you rushed down the deck to wake those people up, on which side did you go?
A. I went on the port side.
Q. How long was it from the time you heard this cross-signal to the time you got aft there to call the people—you say the collision occurred just as you got to the entrance of the cabin behind there—was it or not as quick as you could get from this place down there?
A. I should say it was; I don't suppose it would take more than four or five seconds to get aft.
Q. Mr. Green, did you make an examination of the Argo before she started off on this trip, to see how she was fitted up?
A. I was perfectly astonished the way the boat was fitted up, she was fitted up so nice, I didn't think it; it appeared to be very costly fittings.
Q. What did you find—what were the fittings that was on her? Just tell us in your own way?
A. I hadn't made a thorough enough examination to go through all them details.
Q. Well, just tell us what you saw?
A. In what way
Q. Well, what sort of a cabin did she have?
A. She had a splendid finished cabin, regular Pullman style about everything—velvet, trimmings.
Q. You mean the berths; they were done up the same way as they are in a sleeping car?
A. Something like that.
Q. Trimmed with velvet?
A. Yes, sir.

Q. Upholstered?

A. Upholstered very nicely.

Q. What was it upholstered with? Could you tell whether it was husk or hair mattrass?

A. There was no husk mattrass about them things;that boat was fitted up just about as fine as they fit them Pullman's up.

Q. Did you ever see anything better?

A. Yes, sir; I have seen better—that what they call better, but not very much; it was very finely fitted up.

Q. Did you examine her linen; did you have occasion to do that?

A. Her linen was fine, and lots of them?

Q. Complete?

A. Yes, sir; everything was fine and nice on her.

Q. And her blankets?

A. They were just as fine as I ever saw in my life. I was astonished; I didn't think that boat had them aboard of her like that.

Q. What were they made of, cotton or woolen?

A. There was no cotton blankets on her; they were fine woollen blankets, the finest kind of woollen too, soft and nice.

Q. Have you ever traveled on a Pullman sleeping car?

A. I never had an opportunity, only in the way of a servant.

Q. Have you ever gone as porter on them?

A. I have never been porter, but I have been cook on those fine cars, and went all through them.

Q. How did the cabin of this Argo compare with the interior of the sleeping car?

A. It didn't show up so well as they did, but very nice; pretty near the same thing; not much difference.

Q. Did you lose anything aboard of this boat?

A. I didn't lose much.

Q. You have got charged here one pair of shoes and a hat, is that right?

A. I lost a pair of shoes and a hat.

Q. The shoes you have charged at $3.50, and the hat $1.50?

A. Yes, sir; that is what it cost me exactly.

Q. What was their condition, very good?

A. They were bran new, I had just put them on before that trip.

Q. And they were lost on this trip?

A. Yes, sir.

Testimony of Captain Bazile Jurisch recalled for libellant, taken before Frank H. Mortimer, U. S. Commissioner, on the 30th day of November, 1897.

Appearances:

Richard De Gray, proctor for Libellant; Rouse & Grant, proctors for Claimant.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

Bazile Jurisch, witness, recalled on behalf of libellant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. You have been examined heretofore here in this case?

A. Yes, sir.

Q. I now show you a diagram or map marked "Libellants 3," and desire to ask you who drew the original from which this was taken—who made that map?

A. I did.

Q. For the newspapers?

A. Yes, sir.

Q. Is it correct?

A. Yes, sir; it is.

Q. I see marked on there "New Canal?"

A. Yes, sir; that is the New Canal.

Q. Then 100 feet below are two dots?

A. I said 100 feet, I don't know exactly, I say more or less, 100 feet.

Q. Then below there is two dots?

A. That is the Day Dream inside and my lugger outside, my lugger was outside of the Day Dream.

Q. Now then, coming down the river I see a mark of a boat marked No. 1?

A. That is the steamship coming up on the right side of the bank.

Q. No. 2, what is that?

A. That is the steamship when starting across the river.

Q. No. 3?

A. That is where the collision took place ,that is where they met one another.

Q. No. 3 are two boats?

A. Yes, sir.

Q. No. 5?

A. That is the Argo.

Q. That is the Argo?

A. Yes, sir.

Q. No 3 the upper one at No. 3 is the Argo also?

A. Yes, sir.

Q. No. 6?

A. That is the Argo when I first saw her coming down the river, that is the time she blew her whistle for the Day Dream.

Q. Where was she when she blew two whistles?

A. She blew four whistles.

Q. But before she blew four whistles?

A. As soon as I saw her she blew one whistle for the Day Dream.

Q. Then after that?

A. She blew four whistles, the Argo for the Steamer, the Steamer answered her by four whistles.

Q. Then didn't she at No. 5 blow one whistle before the danger signal?

A. Yes, sir; for the Day Dream, she blew one whistle, I guess that was for the Day Dream.

Q. Then the Day Dream—

A. I don't know exactly, I think she did, I am not sure. I forget.

Q. But these are the positions of the boats in the river as you saw them?

A. Yes, sir.

Q. Then you would say the Argo was coming down in what part of the river?

A. She was coming like any other steamer or tug.

Q. What part of the river?

A. In the middle of the river, but perhaps a little on the east side.

Q. Was she close or far away from the bank on the east side?

A. No, sir.

Q. She was far away?

A. Far away, yes, sir.

Cross-Examination.

By Mr. Grant:

Q. No. 6 on this sketch shows where the Argo first blew one whistle for the Day Dream?

A. Yes, sir.

Q. No. 5 shows the next signal she gave, four whistles?

A. Yes, sir.

Q. For the—

A. For the steamer. The steamer blew four before and she answered after, four whistles, but the steamer blew before the Argo's four whistles.

Q. No. 3 then shows where the collision took place?
A. Yes, sir.
Q. You are sure that the Argo only blew one whistle before the collision?
A. Yes, sir; for the Day Dream.

Testimony of Norbert Buras, for libellant, taken before Frank H. Mortimer, U. S. Commissioner, on the 21st day of May, 1897; filed December 16, 1897.

Appearances:
R. De Gray, proctor for Libellant; Rouse & Grant, proctor for Claimant.

Oscar M. Springer :
vs. : No. 13,319.
S. S. Albert Dumois. :

Norbert Buras, witness sworn on behalf of libelant, testified as follows:

Direct Examination.

By Mr. De Gray:
Q. Where do you live?
A. I live below Fort Jackson, seven miles.
Q. On which side of the river?
A. On the right bank.
Q. Going down?
A. Yes, sir.
Q. What is your business?
A. My business is lumber trade.
Q. In the lumber trade on the water or—
A. On the water, with a schooner.
Q. Do you know where the place is that is called the New Canal and Salt Works?
A. Yes, sir.
Q. That is on the left bank of the river?
A. Yes, sir.
Q. Going down?
A. Yes, sir.
Q. Did you at any time make any effort to find the wreck of the Argo; did you try to find the wreck of the Argo at any time?
A. Yes, sir.
Q. When did you make the trial?
A. The first trial I made the 5th of March.

Q. How did you make it?

A. I took a line, a small line with two little boats, skiffs, with 1300 feet of line between them and I dragged down stream.

Q. What did you find, if anything?

Q. [A.] The line caught on what I catched, that is supposed to be the boat, what I pulled out on it, and after I had the line caught on that boat I hauled the little boats close to it and left the little boat to be a buoy for the boat, and took this grappling hook on the schooner, sail boat, and let it drift down right in the range of the little boat and hooked on it. I tried it on the 5th of March; I catched the wreck and the 22d of March I pulled that piece and the rope up.

Q. Of course you don't know what boat this came from? You can't say that?

A. No, sir; I caught on something else with the grappling hook and pulled it in 24 feet from the surface of the water and it got away from us and when the hook came out it was all full of white paint like this.

Q. Have you ever been by the wreck since?

A. Yes, sir.

Q. Have you tried to get anything else from it since?

A. I got my schooner there right to the wreck; I didn't try to get anything since.

Q. How far below the canal is the place where this wreck lays?

A. It is about four arpents, more or less.

Q. Four arpents, more or less, below the New canal?

A. Yes, sir.

Q. Near which bank of the river? Is it near the right bank going down, or the left bank?

A. It is on the right hand bank going down.

Q. How far from the bank of the river is the wreck?

A. About 500 feet, more or less, from the right bank.

Q. That is, at the present stage of water?

A. Yes, sir.

Q. When the river is low, is the river narrower than it is now at this place?

A. It is a little bit wider now, but it don't amount to much.

Q. How did you get this thing; how did you happen to bring this thing up; tell us how?

A. I caught with a grappling hook on something and pulled and when the grappling hook came up, this thing, this piece of wood (referring to piece of wood produced) came with it.

Q. Then you went and picked it up?

A. Yes, sir.

Q. Did you get anything else?

A. No, sir; I caught this and the rope, the rope was fastened on the grappling hook, it was all twisted on the grappling hook.

Q. Is that rope—is this the same piece of rope you brought up on your grappling hook?

A. Yes, sir.

Q. Who brought this board and this rope from the wreck up to New Orleans here?

A. That is me.

Q. You brought it yourself?

A. Yes, sir.

Q. And this, then, this piece, this board, this narrow door with the brass hinges on it, and that piece of rope, were the things that you fished up from this wreck that you have described lying in the Mississippi river about 500 feet from the right bank going down and four arpents, more or less, below the New Canal?

A. Yes, sir.

Q. How deep is the water where this—where you found this rope?

A. Where I caught those pieces it was 74 feet of water, where this wreck is lying.

Q. Could you tell how—or, first, rather—did you make soundings around her; that is, did you sound to see how deep the water was?

A. Yes, sir; I sounded.

Q. From what you did in working around there, could you tell how the wreck laid, whether it laid across the current or down stream?

A. The way the line—

Q. When you drew the lines up on each side of this wreck how far were the lines apart, do you know?

A. About 60 feet, more or less; the line lay this way, by having this wreck in a kind of a slant so that it would fetch the line closer.

Q. Then you think she lay partially across the stream, partly across the current; not entirely up and down?

A. No; not entirely up and down.

Q. Could you tell from anything you did around this wreck how long it was; was there anything that you could tell how big it was?

A. No; we could not; we could only see by the line, the line lay this way; we could not tell exactly the length; you see, it lay right across her and it would show the whole length.

Q. When you caught this wood, piece of board up, did you

pull it loose and, if so, how did you pull it loose with your grappling iron.

Q. [A.] The grappling iron pulled on it with a windlass.

Q. With a windlass on the schooner?

A. Yes, sir; on my schooner; there was two men, me and another man, heaving on it.

Q. Then you pulled it loose?

A. Yes, sir.

Q. I see one hinge is broken off here?

A. Yes, sir.

Q. Where that hinge is broken off, was that all new and bright when it came up?

A. Yes, sir.

Q. So that it showed you that it had been torn off of something?

A. Yes, sir.

Mr. De Gray: Now, I desire to offer this piece of door and rope expecting, of course, hereafter to identify them by somebody who is familiar with the Argo and show that they are parts of the Argo's wreck.

Cross-Examination.

By Mr. Grant:

Q. Which way did the bow of this wreck point?

A. I couldn't tell you if the bow is one way or the other, because I didn't see the wreck.

Q. How could you tell whether she lay with the stream or across the stream?

A. She is laying slant way in the stream.

Q. How could you tell?

A. By the way the line slanted; it shows this way; the line stood this way on a slant.

Q. You got one line only?

A. No, sir; two line; it is one line, but when the line catched it catched on both ends when it came doubled.

Q. So the line, when you grappled, it was fastened with two ends?

A. Yes, sir; so when the line came and catched on it, it came double, one end on each little boat, so they stood right this way.

Q. But you don't know how she lay of your own knowledge; this is your opinion merely.

A. My opinion is that she is lying this way on a slant, but I can't say whether the bow was up stream or the stern was up stream; all I know the line stood right this way.

Q. At what angle to the river did she lie?
A. About this way.
A. [Q.] About 45 degrees?
A. I couldn't tell you exactly.
Q. When you caught this line under the wreck and pulled it up, one end of the line was further up stream than the other?
A. Yes, sir.
Q. How much further?
A. It showed about 25 or 30 feet one further than the other.
By Mr. Grant:
Q. So that the two ends of the line were about 25 or 30 feet apart?
A. Further up, but this way; the line was 60 feet, more or less, this way off a distance, but when it came nearly up and down one line would be about 25 or 30 feet more up stream.
Q. So that when you pulled the lines taut they would be apart 25 or thirty feet?
A. Yes, sir; one would be more up stream than the other; one came up from the wreck higher than the other; the one that came up was about 25 or thirty feet higher than the other and measuring sideways between the two lines, showing the width between the two would be probably 60 feet.

TESTIMONY OF CAPTAIN JAMES BROWN, RECALLED ON BEHALF OF LIBELANT.

Taken before Frank H. Mortimer, United States Commissioner, on the 24th day of May, 1897, and Filed December 16, 1897.

Appearances:
R. De Gray, Proctor for Libelant.
Rouse & Grant, Proctors for Claimant.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

Captain James Brown, recalled on behalf of libelant, testified as follows:

Direct Examination.

By Mr. De Gray:
Q. Witness is shown a painted piece of wood marked

"Argo 1," consisting of three pieces fastened together with dowels, containing on one end a broken brass hinge and on the other end no hinge but a place where the hinge was broken off, containing on the inside, one eye, and on the opposite end a plate with the eye missing, and asked whether or not he recognized this piece of wood?

A. Yes, sir; that belongs to the Argo.

Q. To what portion of the Argo did this piece of wood belong?

A. It belonged to a place, to one of the chocks, that we had for making fast to the cleats; it shut in there.

Q. Did it belong to the chock; was it part of the chock or part of the bulwarks?

A. It was part of the bulwarks.

Q. Inside or outside of the Argo?

A. It was on the outside of the Argo, to make it flush with the bulwarks.

Q. What was the purpose of having this shutter or door in the bulwarks, as you describe?

A. To keep the water from coming on board when we were out at sea.

Q. How was it fastened?

A. It was screwed in there with those brass hinges.

Q. But when at sea?

A. We had hooks inside, with eyes in the shutter, to close it.

Q. The hooks were in what?

A. They were in the stanchion in the bulwarks.

Q. And the door shut against the stanchion?

A. Yes, sir; and the hook hooked on the inside to hold it shut.

Q. Have you ever seen this piece of wood on the Argo while you were aboard of her?

A. Certainly, I painted it.

Q. Personally?

A. Personally and emphatically; yes, sir.

Q. Have you any doubt about this being the part of the bulwarks of the Argo, as you have described?

A. No, sir; no doubt.

Q. I show you a piece of rope marked "Argo 2," what do you say about that rope?

A. I think it is some of the boat's davit tackle line; being in the water, you know, it has got all muddy inside of it and everything.

Q. Have you—

A. I couldn't swear it was the davit tackle.

Q. You couldn't swear to that?

A. No, but I think it is; I mostly think it is.

Q. I see this is somewhat worn, is it not?

A. Yes, sir.

Q. How was the line that you had on the davit tackle; was it worn like this?

A. No; I don't think it was; not so much as that.

Q. Would this be worn by washing against the side of the boat in the water; would it be inclined to chafe?

A. Yes, sir; it is bound to, laid that way.

Q. It is bound to chafe?

A. Yes, sir.

Q. Do I understand—

A. I think it is some of the davit tackle.

Q. But you are not certain?

A. I can't swear to it, but the other I can swear to; but this, no.

Q. Do you hesitate about this rope because of the condition it is in?

A. Yes, sir; I think so.

Q. About when—what was the condition of the Argo generally?

A. She was in first-class condition. I was all through the boat; I cleaned all over it, painted her and done everything aboard of her; I cleaned her fore and aft, and she was in just as good condition when she sunk as the day she was built.

Q. Did you ever see her out of the water?

A. Yes, sir; she was in the dock in January, and we put two coats of Hammer paint on it.

Q. Is that the January, the same month she was lost in?

A. No, sir; that was the year before.

Q. After that did you see her out of the water?

A. No; I did not see her out after that.

Q. How long had you been, had charge of her?

A. I joined her here in January and staid on her until April, I think, and then I joined her again in September and staid on her until she sunk.

Q. Were you in a position then to know what her condition was at the time she sank?

A. Yes, sir; I had her at sea.

Q. What was her condition?

A. She was in first-class condition; fine, tip-top order, from keel to truck.

Cross-Examination.

By Mr. Grant:

Q. You remember this particular piece of wood, do you?

A. I do for a fact.

Q. Which part of the Argo did it come out of?

A. It was a shutter we used for the chock.

Q. Which chock?

A. Where we run the line out to make fast.

Q. Which chock did it come out of?

A. I couldn't say which chock it came out of; they have the same kind of shutters to each chock; they are alike on both sides of her.

Q. How many chocks were there?

A. Six.

Q. You remember each particular chock, do you?

A. Yes, sir; I know all the chocks, of course. There was one in the waist, one aft and one forward on each side of her.

Q. Do other vessels have chocks?

A. Other vessels have chocks, I expect so; yes, sir.

Q. Did you see this piece of board taken out of the Argo?

A. No; I didn't see it taken out of her.

Q. This is the first time you have seen this piece of wood?

A. I saw it Saturday.

Q. You are positive and ready to swear that—

A. I am ready to swear that is the Argo's shutter.

By Mr. De Gray:

Q. Captain Brown, you say there were three shutters like this on each side of the Argo in her bulwarks, makin gsix all told?

A. Yes, sir.

Q. I see in this picture here where there is a line aft, aft of the shutters there that passes through the bulwarks, what is that shutter, the opening there; was there a shutter there; it is smaller than the others.

A. No; I don't think there was one there.

Q. There was no shutter there?

A. No, sir.

Q. That was just an opening there?

A. Yes, sir.

Q. You were asked whether or not shutters were common in bulwarks of vessels, were you not?

A. I never saw that; not shutters like those; no, I have not, unless on a yacht.

Q. You have seen bulwarks on big vessels?

A. Yes, sir; but they have big shutters.

Q. Would the shutters on a large vessel be of the thickness that this is, or very much thicker?

A. It would be thicker than that.

Q. Is there anything about the construction of this that indi-

cates to you that it is taken from a vessel like—look at these dowels; there is one dowel passing through and here is another one, and here is a third one?

A. Yes, sir.

Q. Is that the way that portion of a vessel is constructed or not, to hold it together?

A. Not all.

Q. Is that the better way?

A. This is the yacht way of doing it, because they never spare any expense in fitting a yacht out.

Q. Do you recognize that brass hinge that is there on that piece that you hold in your hand, on this shutter?

A. Yes sir.

Q. Is that from the Argo?

A. Yes, sir; she was all brass.

Q. You mean all her fittings were brass?

A. Yes sir.

Q. You don't mean her wood was brass?

A. No, sir.

TESTIMONY OF MRS. MARIE B. BOURGEOIS DE BLESINE.

Taken before Frank H. Mortimer, U. S. Commissioner, on the 25th day of March, 1897, and filed December 16th, 1897.

Appearances:

R. De Gray, Proctor for Libelant, Mrs. M. B. De Blesine.

Rouse & Grant, Proctors for Claimant.

Oscar M. Springer :
vs. : No. 13,139.
S/S Albert Dumois. :

Mrs. Marie Bourgeois de Blesine, libelant, sworn and examined in her own behalf, testified as follows:

Direct Examination by Mr. De Gray:

Q. Where do you live, madam?

A. 1738 Tulane avenue.

Q. Are you a widow?

A. Yes, sir.

Q. How long have you been a widow?

A. Sixteen months.

Q. Have you any children living?
A. No, sir.
Q. How many children did you have?
A. Only one.
Q. Never but one?
A. Yes, sir.
Q. What was his full name?
A. He has got a very long name; shall I give them all?
A. [Q.] Yes.
A. Faurie Bourgeois de Blesine.
Q. You are, then, a widow with no children?
A. Yes, sir.
A. [Q.] And this gentleman's name you have mentioned was your only child?
A. Yes, sir.
Q. That is the same person who was lost on the Argo?
A. Yes sir.
Q. What was his business at that time; what did he do?
A. At the time of his death?
Q. Yes?
A. He was a reporter on the Picayune.
Q. Did he do other work besides reporting for the Picayune?
A. Yes, sir.
Q. What did the other work consist of?
A. Writing for magazines and papers and journals.
Q. What would be the total of his receipts per month, about, as near as you can get at it, or his earnings; what were has earnings per month?
A. At the time of his death?
Q. Yes?
A. About $75 per month.
Q. How long had he lived in New Orleans prior to his death?
A. Just since his father died; that would be about fifteen months.
Q. Prior to that where did he live?
A. He studied journalism in St. Louis.
Q. Before he studied journalism was he engaged in any other business?
A. Yes, sir; he was working for his father in the cotton business in Texas.
Q. Do you know what his father allowed him for his services while he was working there?
A. $75 per month.
Q. Was he steadily working on the Picayune at the time

of his death, or had it been determined whether he was to work steadily? What was your information on that subject?

A. He was not engaged steadily at the time of his death, but he was to be employed, that is, at the time he died, steadily.

Q. Where were you living at the time of his death, in the city here?

A. Yes, sir.

Q. At what place?

A. 1938 Tulane avenue.

Q. Keeping house?

A. Yes, sir.

Q. Who was the support and maintenance of your house, your son?

A. He and I both.

Q. Had you any other support than your son?

A. No, sir.

Q. What became of his earnings and revenue that he had; were they given to you?

A. Yes, sir.

Q. Madam, will you state your age, please?

A. I am 44 years old.

Q. How old was your son at the time of his death?

A. He was 23 years and 10 months.

Q. What was his state of health and constitution?

A. Splendid; very fine.

Q. Was he a sickly man or very healthy?

A. He was very healthy.

Q. How about his size; how large was he?

A. He was 6 feet 3 inches, and weighed 180 pounds.

Q. He was healthy, strong and well?

A. Yes, sir; splendid; very fine.

Cross-Examination.

By Mr. Grant:

Q. Have you any property of your own?

A. No, sir; none at all.

Q. How did you support yourself while your son was living?

A. With his earnings and some with my earnings.

Q. How much were your earnings?

A. I suppose about $20 a month.

Q. Have you any particular business?

A. Sewing and keeping house; that is all.

Q. You do needle-work?

A. Yes sir.

Q. Will you tell us how much your son gave you in the month of December?

A. Do I remember how much he gave me?
Q. Yes, in money?
A. I don't know.
Q. Do you know how much he gave you in any one month?
A. He gave me about all, I should suppose; I was the banker and he drew on me whenever he needed it.
Q. Didn't he have to furnish himself with clothing?
A. We attended to that ourselves, in between us.
Q. Were you living in a rented house?
A. Yes, sir.
Q. Were your father and mother long lived?
A. Yes, sir.
Q. To what age did they live?
A. Are they dead?
Q I ask you to what age did your father and mother live?
A. I couldn't exactly say my father's age; I don't know exactly; so long ago I don't remember.
Q. Can you tell what age your mother died?
A. 48 years, I suppose.
Q. How old was your father?
A. I suppose about 60 years old.
Q. He was about 60 years old when he died?
A. Yes, sir; so many years ago I don't remember very much about it.
Q. How old was your husband when he died?
A. 55.
Q. Did you know his father and mother?
A. No, sir; they died, I think in '49. I was not born then.
Q. Have you ever heard whether they died young or old?
A. No, sir; I don't know anything at all about it.
Q. Did your son leave any insurance?
A. No, sir.
Q. Did he leave any personal property?
A. No, sir; he was too young and healthy to be injured; we never spoke of that.
Q. You mean no personal property except his clothes and personal effects?
A. Yes, sir.
By Mr De Gray:
Q. He was unmarried? A. Yes, sir.
Q. He had no children? A. No, sir.
Q. He never had been married? A. No, sir.

DEPOSITIONS OF FRANK HUETTEMANN, ET ALS.

Filed June 15th, 1897.

Oscar M. Springer :
vs. : No. 13,319.
Norwegian Steamship Albert Dumois. :

Testimony of Frank Huettemann, Timothy E. Tarsney, William Howie Muir, Safford S. De Lane and Edward H. Gillman, all residing at Detroit, Michigan, taken under commission issued in the above entitled and numbered cause, before Charles T. Wilkins, a Notary Public in and for the County of Wayne, city of Detroit, State of Michigan, on the 1st, 2d, 3d and 8th day of June, 1897.

Deposition of Frank Huettemann.

Frank Huettemann, being duly sworn to tell the truth, the whole truth and nothing but the truth by said Notary, says:

1st Interrogatory: What is your age, residence and business, and what has been your residence and business for the past ten years or more?

Answer to 1st Interrogatory: My age is fifty-two years; my residence Detroit, Michigan, and my business that of a machinist. I have been in the machinists' business for thirty-five years and have been living in Detroit for thirty-two years, and been in business for myself since 1872.

2d Interrogatory: What experience, if any, have you had in the building, buying and selling of steam vessels steamboats steam yachts and the like?

Answer to 2d Interrogatory: For some years I used to build yacht engines and machinery for steam yachts and the like, and also put them in.

3d. Interogatory: Did you have any knowledge of the steam yacht Argo, formerly called the Leila, in the years 1895 and 1896, or at any other time, and, if yes, how was that knowledge acquired. State fully, and state all you may know about her?

Answer to 3d Interrogatory: I knew the Leila when she was here, and repaired some of the machinery and the engines, and looked over her every once in a while, and done all the machine work on her while she was here at Detroit. In 1896 I saw her at Galveston, Texas; I was on her there for ten days, in the month of May. I put in a new truss bearing and new coupling, and I looked her over, all the machinery, etc. I had

the machinery all apart and made an examination of her and found everything in good shape and put it back again. After she was running I made three or four trips on her across the shore to see how she was running, and everything was in first-class condition.

4th Interrogatory: If you state you were familiar with said Argo from a personal acquaintance of her in 1896, and supposing she had been inspected and passed by the local inspectors in New Orleans in September, 1896, and that as late as January 4, 1897, her boiler had again been thoroughly examined and tested to a hydrostatic pressure of 186 pounds, and was found sufficient in strength to be allowed a safe working pressure of 124 pounds, and that her working pressure was allowed at 124 pounds, and her safety valve set at 124 pounds, and nothing had occurred between said 4th day of January, 1897, and the day of her loss on the morning of January 28, 1897, what, in your judgment, would be a fair market value of said Argo at the time of said loss, on said January 28, 1897?

Answer to 4th Interrogatory: Supposing all the facts stated in the fourth direct interrogatory to be true, in my judgment a fair market value of the Argo at the time of her loss, January 28th, 1897, would be from twenty-five to thirty thousand dollars.

5th Interrogatory: What, in your judgment, would be the cost of building and equipping a vessel of the kind and class of the Argo in January, 1897?

Answer to 5th Interrogatory: I do not think she could be replaced for less than twenty-five to thirty thousand dollars in January, 1897.

6th Interrogatory: State any other matter or thing you may know in this controversy, which is concerning the loss of the Argo in January, 1897, and her value at said time, as fully and particularly as if thereunto specially interrogated?

Answer to 6th Interrogatory: I have not seen the yacht since May, 1896, but at that time I know that when I saw her she was the speediest vessel in Galveston Bay, and everybody spoke highly of her. Her general condition was first-class, and she was seaworthy, and considered the finest boat around there. She made trips across the Gulf of Mexico from Galveston to Corpus Christi and New Orleans also.

Cross-Interrogatories.

1st Cross-Interrogatory: When, where and by whom was the steam yacht Argo built, and for whom was she built? Give the name, or names and residences of the builders, or original purchaser, and give the purchase price?

Answer to 1st Cross-Interrogatory: I have no opinion on this subject.

2nd Cross-Interrogatory: Has not Oscar M. Springer, or some other person, orally or in writing, made suggestions to you as to the answers you should make to the interrogatories, or some of them, propounded under this Commission?

Answer to 2d Cross-Interrogatory: No.

3d Cross-Interrogatory: Did you make any repairs to the Argo, or any alterations; if not, how do you know what the same cost?

Answer to 3d Cross-Interrogatory: I made the repairs as stated in my answer to the third direct interrogatory.

4th Cross-Interrogatory: Is not your statement as to the cost of the alterations and repairs based on the information given you by Oscar M. Springer, or some one else?

Answer to 4th Cross-Interrogatory: No.

5th Cross-Interrogatory: Give the names and residences of the various persons who have been owners of the Argo, since she was built, and the price each of said persons paid for her?

Answer to 5th Cross-Interrogatory: I do not know.

6th Cross-Interrogatory: I do not know.

6th Cross-Interrogatory: Was not the hull of the Argo shortened, after she passed out of the builder's hands, by cutting off the stern, or otherwise?

Answer to 6th Cross-Interrogatory: I do not think so from her appearance; she did not look as if she had been shortened.

7th Cross-Interrogatory: Upon what do you base your opinion as to the value of the Argo, when she was lost, in January, 1897?

Answer to 7th Cross-Interrogatory: I think the Argo was worth as much in January, 1897, as she was when I saw her last, and I base my opinion on her value at that time, on the result of my personal examination of her, and also on my experience with steam vessels, and the manufacturing and setting up of marine engines lasting over a period of about thirty-five years.

8th Cross-Interrogatory: Upon what do you base your opinion as to the cost of building and equipping a vessel, simlar to the Argo? Have you ever owned, built or sold such a vessel? If you have built, or sold any such vessel, for whom did you build her, and to whom did you sell her? Give names and residences?

Answer to 8th Cross-Interrogatory: I base my opinion of the cost of building and equipping of such vessels on my experience, and examination of the Argo, as stated in my answer to the

seventh cross-interrogatory. I have never built, owned or sold such a vessel as the Argo.

9th Cross-Interrogatory: Who was present at the taking of this deposition besides the officer who propounded the interrogatories and yourself?

Answer to 9th Cross-Interrogatory: The only person present at the time of taking this deposition, besides the officer who propounded these interrogatories and myself, was Mr. J. J. E. Linton, a court stenographer.

(Signed) FRANK HUETTEMAN,

Subscribed and sworn to before me this 3d day of June, A. D. 1897.

(Signed) CHARLES T. WILKINS,
[Seal] Notary Public.

Deposition of T. E. Tarsney.

T. E. Tarsney being duly sworn to tell the truth, the whole truth and nothing but the truth, by said notary, says:

1st Interrogatory: What is your age, residence and business, and what has been your residence and business for the past ten years or more?

Answer to 1st Interrogatory: My age is forty-eight years, my business it that of an attorney-at-law and proctor in admiralty; such has been my business for the past twenty years and more, and for the four years now last past I have been a resident of the city of Detroit, and prior to that time I was a resident of the city of Saginaw, Michigan.

2d Interrogatory: What, experience, if any, have you had in the building, buying and selling steam vessels, steamboats, steam yachts and the like?

Answer to 2d Interrogatory: I have had no experience in the building, buying and selling of vessels, steamboats, steam yachts and the like, except that I have drafted the papers of transfer in many cases, and thus become familiar with the buying and selling of vessels by others. For seven years I was a practical marine engineer on the lakes, and hold a Chief Engineer's certificate.

3d Interrogatory: Did you have any knowledge of the steam yacht Argo, formerly called the Leila, in the years 1895 and 1896 or at any other time, and, if yes, how was that knowledge acquired. State fully, and state all you may know about her?

Answer to 3d Interrogatory: I did have knowledge of the steam yacht Argo, formerly called the Leila, in the year 1896, and my knowledge of her was acquired in a trip I made on board of her from Corpus Christi, Texas, to Galveston, Texas. I was

on board of the yacht, I think, four days in all, during a part of which time we were lying at the dock and part at anchor inside the Aransas Pass, and a portion of the time running. I was, at the time, in company with Captain Charles H. Hubbel, who died in February, 1897, and who contemplated entering into a contract for the construction of a canal in southern Texas, and the trip we took on board this yacht from Corpus Christi to Aransas Pass was by the inland route, and was made for the purpose of inspecting the proposed work, and it was contemplated at that time that this yacht would, or might be used in the enterprise, and for that purpose both Captain Hubbel and myself made an examination of the boat for the purpose of determining her fitness, and my inspection of her was quite thorough. I found the boat in excellent condition with the exception that the steam allowed her at that time was lower than I thought she ought to carry, and lower, in my judgment, than the inspectors should have allowed. Her engines seemed to be working too much upon her crank, and Captain Hubbel and myself both recommended that a new driving bearing be put in.

4th Inerrogatory: If you state you were familiar with said Argo from a personal acquaintance of her in 1896 and supposing she had been inspected and passed by the local inspectors in New Orleans in September, 1896, and that as late as January 4, 1897, her boiler had been thoroughly examined and tested to a hydrostatic pressure of 186 pounds, and was found sufficient in strength to be allowed a safe working pressure of 124 pounds, and that her working pressure was allowed at 124 pounds, and her safety valve set at 124 pounds, and nothing had occurred between said 4th day of January, 1897, and the day of her loss on the morning of January 28, 1897, what in your judgment would be a fair market value of said Argo at the time of said loss, on said Januray 28, 1897?

Answer to 4th Interrogatory: Assuming the statements contained in the third direct interrogatory to be true, I should say that a fair value of the Argo on the 28th day of January, A. D. 1897, would be eighteen thousand dollars and upwards.

5th Interrogatory: What, in your judgment, would be the cost of building and equipping a vessel of the kind and class of the Argo in January, 1897?

Answer to 5th Interrogatory: My judgment is that the cost of building and equipping a vessel of the kind and class of the Argo in January, 1897, would be not less than twenty thousand dollars.

6th Interrogatory: State any other matter or thing you may know in this controversy, which is concerning the loss of the

Argo in January, 1897, and her value at said time, as fully and particularly as if thereunto specially interrogated?

Answer to 6th Interrogatory: I do not know of any other mater or thing in this controversy, which is concerning the loss of the Argo in January, 1897, or her value at that time.

Cross-Interrogatories.

1st Cross-Interrogatory: When, where and by whom was the steam yacht Argo built, and for whom was she built? Give the name, or names, and residences of the builders, or original purchaser, and give the purchase price?

Answer to 1st Cross-Interrogatory: I do not know of my own knowledge, my knowledge on that subject is hearsay.

2d Cross-Interrogatory: Has not Oscar M. Springer, or some other person, orally or in writing, made suggestions to you, as to the answers you should make to the interrogatories, or some of them, propounded under this Commission?

Answer to 2d Cross-Interrogatory: No suggestions have been made to me by Oscar M. Springer, or any other person, orally or in writing, as to the answers I should make to the interrogatories, or any of them, propopnded, although Mr. Oscar Springer, about a month ago, asked me my judgment concerning some of the questions propounded therein.

3d Cross-Interrogatory: Did you make any repairs to the Argo, or any alterations; if not, how do you know what the same cost?

Answer to 3d Cross-Interrogatory: I did not make any repairs to the Argo or any alterations except so far as the driving bearing referred to in my answer to the third direct interrogatory may have been procured partially at my suggestion. I do not know what the same cost.

4th Cross-Interrogatory: Is not your statement, as to the cost of the alterations and repairs based on information given you by Oscar M. Springer, or some one else?

Answer to 4th Cross-Interrogatory: I have made no statement as to the cost of alterations or repairs, and I have no information upon the subject either from Mr. Springer or any other person.

5th Cross-Interrogatory: Give the names and residences of the various persons who have been owners of the Argo since she was built, and the price each person paid for her?

Answer to 5th Cross-Interrogatory: I do not know the names or residences of the various persons who have been the owners of the Argo since she was built, or the price each of the persons paid for her, except that Mr. Oscar M. Springer, the libelant

herein, I understood to be the owner, but I do not know what he paid for her.

6th Cross-Interrogatory: Was not the hull of the Argo shortened after she passed out of the builders' hands, by cutting off the stern, or otherwise?

Answer to 6th Cross-Interrogatory: I have no knowledge whether the hull of the Argo was shortened after she passed out of the builders' hands by cutting off the stern or otherwise, but my judgment would be that she was not, as her lines seemed to be symmetrical.

7th Cross-Interrogatory: Upon what do you base your opinion as to the value of the Argo, when she was lost, in January, 1897?

Answer to 7th Cross-Interrogatory: I base my opinion as to the value of the Argo when she was lost in January, 1897, upon my knowledge of the construction and equipment of steam vessels; a practical experience as a marine engineer for seven years; a practical experience in machine shop and in the operation of stationary engines, and my experience as a proctor in admiralty, and knowledge generally acquired from persons familiar with steam vessels, and more particularly from the personal observation and inspection of the yacht Argo as stated in my answer to the third direct interrogatory; and, about three weeks ago a client of mine, Mrs. Anna Grace Henkel, of this city, sold her steam yacht "Azalia" to Alfred E. Brush also of this city, for a consideration of eighteen thousand dollars. I was consulted by Mrs. Henkel concerning this sale. In my judgment, the value of the Argo exceeded that of the Azalia.

8th Cross-Interrogatory: Upon what do you base your opinion as to the cost of building and equipping a vessel, similar to the Argo? Have you ever owned, built, or sold such a vessel? If you have built, or sold any such vessel, for whom did you build her, and to whom did you sell her? Give names and residences?

Answer to 8th Cross-Interrogatory: I base my opinion as to the cost of building and equipping vessels of the class of the Argo upon the same facts as stated in my answer to the last cross-interrogatory. I have never owned, built or sold such a vessel.

9th Cross-Interrogatory: Who was present at the taking of this deposition, besides the officer who propounded the interrogatories and yourself?

Answer to 9th Cross-Interrogatory: There was present at the taking of this deposition the officer who propounded the interrogatories and myself, and Mr. J. J. E. Linton, a Court stenographer, and no other person.

(Signed) TIMOTHY E. TARSNEY.

Subscribed and sworn to before me this 1st day of June, A. D. 1897.

[Seal] (Signed) CHARLES T. WILKINS,
Notary Public.

W. Howe Muir, being duly sworn to tell the truth, the whole truth, and nothing but the truth, by said Notary, says:

1st Interrogatory: What is your name, age, residence and business, and how long have you so resided and been engaged?

Answer to 1st Interrogatory: My age is thirty years, my residence is in Detroit, and my business that of a manuafacturer, and has been that of a manufacturer for six years. I have resided in Detroit for twenty-five years.

2nd Interrogatory: What experience, if any, have you had in the buying, selling or building of steam vessels, steamboats, or steam yachts?

Answer to 2nd Interrogatory: The only experience I have had in the building, buying or selling of steam yachts was in connection with the sale of the steam yacht Leila.

3rd Interrogatory: What knowledge have you of the steam yacht Argo, formerly called the Leila, and when and where and how did you acquire said knowledge, in what manner?

Answer to 3rd Interrogatory: I have been on the boat as a passenger a number of times; know something of her past history before she was purchased by people here in Detroit, and know something of her construction and equipment, and also interested in her in behalf of my father's estate. She was a composite boat and equipped with compound engines while here in Detroit, and as I remember it originally had a Herreschoff Tubular Boiler, which was changed, I think, to a vertical Tubular Boiler after being purchased by the people here in Detroit. She was a boat of good construction and sea-worthy, and in good repair, having had all her upper works repaired during the time she was owned here in Detroit. I learned afterwards that some of her planking was not in good shape and had to be rebuilt in Chicago, but her frame being of metal, were in as good shape as when she was first built.

4th Interrogatory: Do you know of any sales of the yacht Leila? If yes, when and where did they take place, and at what price, and state whether or not at the time of said sales she was in fact worth more than she sold for?

Answer to 4th Interrogatory: The only sale that I know of was from the Toledo people to the Detroit syndicate, and I do not know the date of the purchase, nor do I know the exact price. She was afterwards sold by the Detroit syndicate to Captain John Prinderville, of Chicago, through Mr. Edward H. Gill-

man; I do not now recall whether the price was nine thousand or seven thousand dollars. She was sold on account of the parties owning her having no more use for her, and they wanted to dispose of her, if even at a sacrifice. I made no examination of her at the time of the sale.

5th Interrogatory: Do you know of any money being spent in any repairs or improvements on said Leila, and if yes, how much was spent and what were said alterations and improvements, and how did they effect the value of the vessel?

Answer to 5th Interrogatory: Her upper works were all renewed while she was owned by the Detroit syndicate, and her boiler was replaced, the engines and machinery was all overhauled and refitted throughout, I think at a cost of about three thousand dollars. They added just so much to the value of the vessel, as the work at the time was done at a very reasonable cost, most of it being done by the crew, so that the only expense was the cost of material.

6th Interrogatory: Did you ever know or see the Leila after her name was changed to that of the Argo, and if yes, when and where, and what was her market value the last time you saw her, and what was her condition at said time?

Answer to 6th Interrogatory: I was never on board the Leila after the name was changed to the Argo, and do not know what changes, if any, were made.

7th Interrogatory: Suppose the Argo had been kept in first-class condition, and that she had been inspected and passed by the local inspectors in September, 1896, and that as late as January 4th, 1897, her boiler had again been thoroughly examined and inspected and tested to a hydrostatic pressure of 186 pounds, and was found sufficient in strength to be allowed a safe working pressure of 124 pounds, and that she was allowed a working pressure at 124 pounds and her safety valve was set at 124 pounds, and nothing had occurred between said 4th day of January, 1897, and the day of her loss on the morning of January 28th, 1897, what, in your judgment, would be a fair market value of said Argo on said January 28, 1897?

Answer to 7th Interrogatory: I do not know, as I was never on the Argo after she was sold in Detroit, and do not know what repairs or changes were made in her. I can give no opinion as to her market value in 1897.

8th Interrogatory: What, in your judgment would the cost of building and equipping a vessel of the kind and class of the Argo in January last?

Answer to 8th Interrogatory: I cannot give any opinion or estimate, on account fo the reasons given in my answer to the seventh of such interrogatories.

9th Interrogatory: State any other matter or thing you may know in this controversy, which is concerning the loss of the Argoin January, 1897, and her value at said time, as fully and particularly as if thereunto specially interrogated.

Answer to 9th Interrogatory: I do not know the value of the Argo in 1897, and know nothing of her loss except from hearsay.

Cross-Interrogatories.

1st Cross-Interrogatory: When, where and by whom was the Steam Yacht Argo built, and for whom was she built? Give the name, or names, and residences of the builders, or original purchaser, and give the purchase price?

Answer to 1st Cross-Interrogatory: I know she was built by Hereschoff, of Rhode Island, but I do not know when or for whom, nor do I know the purchase price.

2nd Cross-Interrogatory: Has not Oscar M. Springer, or some other person, orally, or in writing, made suggestions to you as to the answers you should make to the interrogatories, or some of them, propounded under this Commission?

Answer to 2nd Cross-Interrogatory: No.

3rd Cross-Interrogatory: Did you make any repairs to the Argo, or any alterations? If not, how do you know what the same cost?

Answer to 3rd Cross-Interrogatory: I did not make any repairs of the Steam Yacht Argo or any alterations, and do not know what any such repairs or alterations may have cost; all my knowledge is of the yacht Leila before she went to Chicago, and I have stated my knowledge as to this in my answer to the fifth of such direct interrogatories.

4th Cross-Interrogatory: Is not your statement as to the cost of the alterations and repairs based on information given you by Oscar M. Springer, or some one else?

Answer to 4th Cross-interrogatory: No.

5th Cross-Interrogatory: Give the names and residences of the various persons who have been owners of the Argo since she was built and the price each of said persons paid for her?

Answer to 5th Cross-Interrogatory: All I know is that she was purchased by the Detroit syndicate, known as the Grosse Pointe Navigation Company, from parties in Toledo, and sold by the Grosse Ponite Navigation Company to Captain Prinderville, of Chicago, and the price paid for her being the same as that stated by me in my answers to the direct interrogatories.

6th Cross-Interrogatory: Was not the hull of the Argo shortened after she passed out of the builders' hands, by cutting off the stern, or otherwise?

Answer to 6th Cross-Interrogatory: Yes; by cutting off the stern her hull was shortened, by cutting off the fan-tail. This was done some time previous to her being bought by the Detroit syndicate. This would not alter her strength or value. I think this was done in order to bring her through the locks of the Welland Canal.

7th Cross-Interrogatory: Upon what do you base your opinion as to the value of the Argo, when she was lost in January, 1897?

Answer to 7th Cross-Interrogatory: I have given no opinion as to the value of the Argo when she was lost in January, 1897.

8th Cross-Interrogatory: Upon what do you base your opinion as to the cost of building and equipping a vesel similar to the Argo? Have you ever owned, built or sold such a vessel? If you have built, or sold any such vessel, for whom did you build her, and to whom did you sell her? Give names and residences?

Answer to 8th Cross-Interrogatory: I have given no opinion as to this, and I have never owned or built such a vessel, but was connected with the sale of the Leila to Captain John Prinderville, of Chicago.

9th Cross-Interrogatory: Who was present at the taking of this deposition, beside the officer who propounded the interrogatories and yourself?

Answer to 9th Cross-Interrogatory: There was present at the taking of this deposition, beside the officer who propounded the interrogatories and myself Mr. J. J. E. Linton, a Court stenographer, and no other person.

(Signed) W. HOWIE MUIR.

Subscribed and sworn to before me this 2nd day of June, A.
[Seal] (Signed) CHARLES T. WILKINS,
Notary Public.

Safford S. De Lano, being duly sworn to tell the truth, the whole truth, and nothing but the truth, by said Notary, says:

1st Interrogatory: What is your name, age, residence and business, and how long have you so resided and been engaged?

Answer to 1st Interrogatory: My age is forty-one years, and residence Detroit, Michigan. I am treasurer of the Michigan Peninsular Car Company. I have resided in Detroit twenty-four years, and have been connected with the Michigan Peninsular Car Company since its organization, September 1st, 1892,

and all the time prior to that was connected with the Michigan Car Company, the predecessor of the Michigan Peninsular Car Company.

2nd Interrogatory: What experience, if any, have you had in the buying, selling or building of steam vessels, steamboats, or steam yachts?

Answer to 2nd Interrogatory: I have had no particular experience excepting during the years 1885, up to and including the year 1892; I was connected with the Grosse Pointe Navigation Company, the owners of the steam yacht Leila and during that time I had charge of the finances and books of the organization.

3rd Interrogatory: What knowledge have you of the steam yacht Argo, formerlly called the Leila, and when and where, and how did you acquire said knowledge, in what manner?

Answer to 3rd Interrogatory: I acquired the knowledge as stated in my answer to the second interrogatory. I have been on the boat a number of times, and seen her. I was conversant with the the boat from sailing on her. I have been over the boat a number of times, and know her to be a sea-worthy vessel, having been out with her in very high storms, and also having had experience as to her speed, and know she was capable of running twenty miles an hour.

4th Interrogatory: Do you know of any sales of the yacht Leila, and if yes, when and where did they take place, and at what price, and state whether or not, at the time of said sales she was in fact worth more than she sold for?

Answer to 4th Interrogatory: During my connection with the company in 1892 the Leila was sold to Captain John Prinderville, of Chicago, through his agent, Mr. Edward H. Gillman, of Detroit, for the sum of seven thousand dollars, and that time was fully aware that the price was supposed to be considerably less than she was worth, but owing to circumstances the company felt that it was policy for them to accept the offer, the company desiring to go out of existence and not having the same use for the boat as formerly. The vessel had been purchased by the Grosse Pointe Navigation Company, which was composed of gentlemen owning summer residences at Grosse Pointe, near Detroit, for the purpose of conveniently taking them from Detroit to the Pointe. Some of these gentlemen had died, some had moved away, and also an electric line having been built, running from Detroit to the Pointe, the usefulness of the boat had ceased, and they did not care to keep up the organization, and were therefore willing to sell her at a sacrifice rather than be bothered with keeping her.

5th Interrogatory: Do you know of any money being spent in any repairs or improvements on said Leila, and if yes, how much was spent and what were said alterations and improvements, and how did they effect the value of the vessel?

Answer to 5th Interrogatory: I know the Leila was purchased by the company in January, 1884, at a cost of $10,644.03. Each spring, before commencing the season, she was always examined and put in first class condition for the season's use, at an expense varying from five hundred to a thousand dollars each year; that in the year 1887 a new boiler was put into the Leila, and other repairs necessary thereto, amounting to twenty-nine hundred dollars. This is all the particular alterations made by the company except the general repairs to keep her up in good condition. She was supposed to be of more value after the alterations than prior to them.

6th Interrogatory; Did you ever know or see the Leila after her name was changed to that of the Argo, and if yes, when and where, and what was her market value the last time you saw her, and what was her condition at said time?

Answer to 6th Interrogatory: No.

7th Interrogatory: Suppose the Argo had been kept in first-class condition, and that she had been inspected and passed by the local inspectors in September 1896, and that as late as January 4th, 1897, her boiler had again been thoroughly examined and inspected and tested to a hydrostatic pressure of 186 pounds, and was found sufficient in strength to be allowed a safe working pressure of 124 pounds, and that she was allowed a working pressure at 124 pounds, and her safety valve was set at 124 pounds, and nothing had occurred between said 4th day of January, 1897, what, in your judgment, would be a fair market value of said Argo on said January 28th, 1897?

Answer to 7th Interrogatory: Never having seen the Argo after her sale in Detroit, when she was the Leila, and not knowing anything about her condition after that time, I do not feel competent to answer this interrogatory.

8th Interrogatory: What, in your judgment, would be the cost of building and equipping a vessel of the kind and class of the Argo in January last?

Answer to 8th Interrogatory: I am not competent to give any opinion in this matter.

9th Interrogatory: State any other matter or thing you may know in this controversy, which is concerning the loss of the Argo in January, 1897, and her value at said time, as fully and particularly as if thereunto specially interrogated.

Answer to 9th Interrogatory: I know nothing except as above replied.

Cross-Interrogatories.

1st Cross-Interrogatory: When, where and by whom was the Steam Yacht Argo built, and for whom was she built? Give the name, or names, and residences of the builders, or original purchaser, and give the purchase price?

Answer to 1st Cross-Interrogatory: The only knowledge I have is that she was built by the Hereschoff Company at Bristol, Massachusetts, but do not know for whom she was built, but do know she was puchased by a party of gentlemen in Toledo for their use in and about Toledo, but do not know the names of these purchasers, or her original purchase price. She was bought from these gentlemen for the Grosse Pointe Navigation Company.

2nd Cross-Interrogatory: Has not Oscar M. Springer, or some other person, orally or in writing, made suggestions to you as to the answers you should make to the interrogatories, or some of them propounded under this commission.

Answer to 2nd Cross-Interrogatory: No.

3rd Cross-Interrogatory: Did you make any repairs to the Argo, or any alterations? If not, how do you know what the same cost?

Answer to 3rd Cross-Interrogatory: I had nothing to do with any repairs or alterations of the Argo, all my connection with any repairs or alterations to the vessel is as stated in my answer to the fifth direct interrogatory.

4th Cross-Interrogatory: Is not your statement, as to the cost of the alterations and repairs, based on information given you by Oscar M. Springer or some one else.

Answer to 4th Cross-Interrogatory: No.

5th Cross-Interrogatory: Give the names and residences of the various persons who have been owners of the Argo since she was built, and the price each of said persons paid for her?

Answer to 5th Cross-Interrogatory: My only knowledge on this point is stated in my answer to the fourth direct interrogatory.

6th Cross-Interrogatory: Was not the hull of the Argo shortened, after she passed out of the builders' hands, by cutting off the stern or otherwise?

Answer to 6th Cross-Interrogatory: I know nothing about the matter.

7th Cross-Interrogatory: Upon what do you base your opinion, as to the value of the Argo, when she was lost, in January, 1897?

Answer to 7th Cross-Interrogatory: I have given no opinion as to the value of the Argo, when she was lost, in January 1897.

8th Cross-Interrogatory: Upon what do you base your opinion as to the cost of building and equipping a vessel similar to the Argo? Have you ever owned, built or sold such a vessel? If you have built or sold any such vessel, for whom did you build her, and to whom did you sell her? Give names and residences.

Answer to 8th Cross-Interrogatory: I have given no opinion as to the cost of building and equipping of vessels similar to the Argo. I have never owned, built or sold such a vessel excepting as stated in my replies to the direct interrogatories.

9th Cross-Interrogatory: Who was present at the taking of this deposition beside the officer who propounded the interrogatories and yourself?

Answer to ninth Cross-Interrogatory: The only person present at the time of the taking of this deposition, besides the officer who propounded these interrogatories and myself, was Mr. J. J. E. Linton, a court stenographer.

(Signed) SANFORD S. DE LANO.

Subscribed and sworn to before me this 2d day of June, A. D. 1897.

(Signed) CHARLES T. WILKINS,
[Seal] Notary Public.

Edward H. Gillman, being duly sworn to tell the truth, the whole truth and nothing but the truth, by said Notary, says:

1st Interrogatory: What is your name, age, residence and business, and how long have you so resided and been engaged?

Answer to 1st Interrogatory: My age is fifty-five years, and my residence is Detroit Michigan, where I have lived for forty-seven years. I am at present employed in the County Treasurer's office, and have been so employed for the last three years.

2d Interrogatory: What experience, if any, have you had in the buying, selling, or building of steam vessels, steamboats or steam yachts?

Answer to 2d Interrogatory: I have had considerable experience in buying and selling steam yachts and steam vessels, but none in building the same. During the last fifteen years I have done a good deal of this business. I have also sailed the lakes, and began sailing in 1859, and was engaged in the same business for sixteen years.

3d Interrogatory: What knowledge have you of the steam yacht Argo, formerly called the Leila, and when and where, and how did you acquire said knowledge, in what manner?

Answer to 3d Interrogatory: I knew the boat when she first came here, but I do not recall the year. This was the time she was running from Detroit to Grosse Pointe, and Captain Stone

was commander. I do not know where Captain Stone is now. I made a survey of her the year I negotiated the sale for the Chicago parties. I went over her then with Captain John Prinderville, of Chicago, and made a careful survey of her for the purpose of ascertaining what her actual value was.

4th Interrogatory: Do you know of any sales of the yacht Leila, and, if yes, when and where did they take place, and at what price, and state whether or not, at the time of said sales, she was in fact worth more than she sold for?

Answer to 4th Interrogatory: The only sale I know of, is the one from the Grosse Pointe Navigation Company to the Chicago parties. I do not recall the exact year of this sale. At that time she was sold for $7,000.00 or $9,000.00, but I cannot recall which; but at that time she was worth more and I would say positively she was worth $12,000.00 or $15,000.00. That is the price at which Capatin John Prinderville and I rated her.

5th Interrogatory: Do you know of any money being spent in any repairs or improvements on said Leila, and, if yes, how much was spent and what were said alterations and improvement, and how did they effect the value of the vessel?

Answer to 5th Interrogatory: I do not know.

6th Interrogator: Did you ever know or see the Leila after her name was changed to that of the Argo, and, if yes, when and where, and what was her market value the last time you saw her, and what was her condition at said time?

Answer to 6th Interrogatory: No.

7th Interrogatory: Suppose the Argo had been kept in first-class condition, and that she had been inspected and passed by the local inspectors in September, 1896, and that as late as January 4th, 1897, her boiler had again been thoroughly examined and inspected and tested to a hydrostatic pressure of 186 pounds, and was found sufficient in strength to be allowed a safe working pressure of 124 pounds, and that she was allowed a working pressure at 124 pounds and her safety valve was set at 124 pounds, and nothing had occurred between said 4th day of January 1897, and the day of her loss on the morning of January 28th, 1897, what, in your judgment, would be a fair market value of said Argo on said January 28, 1897?

Answer to 7th Interrogatory: After the Leila left Detroit and her name was changed to the Argo I never saw the vessel, consequently I cannot answer this question, but if she were in as good condition as when she left Detroit, she would be worth at least $12,000.00 to $15,000.00. The reason that the Grosse Pointe Navigation Company sold her so very cheap was because they wanted to get rid of her, as they had no use for her in the runs she was making from Detroit to Grosse Point.

8th Interrogatory: What, in your judgment, would be the cost of building and equipping a vessel of the kind and class of the Argo in January last?

Answer to 8th Interrogatory: As I have stated before, I did not see the yacht after her name was changed to the Argo, but a vessel of her class could not have been built short of thirty or thirty-five thousand dollars.

9th Interrogatory: State any other matter or thing you may know in this controversy, which is concerning the loss of the Argo in January, 189?, and her value at said time, as fully and particularly as if thereunto specially interrogated?

Answer to 9th Interrogatory: I know nothing further than that she was a first-class boat and a regular sea-going vessel.

Cross-Interrogatories.

1st Cross-Interrogatory: When, where and by whom, was the steam yacht Argo built, and for whom was she built? Give the name, or names and residences of the builders, or original purchaser, and give the purchase price?

Answer to 1st Cross-Interrogatory: I do not know where, when and by whom the Argo was built, or for whom she was built, or the names or residences of the persons who built her or purchased her, but I did know that at the time I made the inspection of her, and I think she was built by the Hereschoff people.

2d Cross-Interrogatory: Has not Oscar M. Springer, or some other person, orally, or in writing, made suggestions to you as to the answers you should make to the interrogatories, or some of them, propounded under this Commission?

Answer to 2d Cross-Interrogatory: No.

3d Cross-Interrogatory: Did you make any repairs to the Argo, or any alterations; if not, how did you know what the same cost?

Answer to 3d Cross-Interrogatory: I made no repairs to the Argo, and have made no statement as to what any repairs or alterations cost.

4th Cross-Interrogatory: Is not your statement, as to the cost of the alterations and repairs based on information given you by Oscar M. Springer, or some one else?

Answer to 4th Cross-Interrogatory: I have made no statement as to the cost of any alterations or repairs.

5th Cross-Interrogatory: Give the names and residences of the various persons who have been owners of the Argo since she was built and the price each of said persons paid for her?

Answer to 5th Cross-Interrogatory: I do not know, excepting the sale from the Grosse Pointe Navigation Company to Captain John Prinderville, of Chicago, and the price was then either $7,000.00 or $9,000.00.

6th Cross-Interrogatory: Was not the hull of the Argo shortened after, she passed out of the builders' hands, by cutting off the stern or otherwise?

Answer to 6th Cross-Interrogatory: I do not know anything of this.

7th Cross-Interrogatory: Upon what do you base your opinion as to the value of the Argo, when she was lost, in January, 1897?

Answer to 7th Cross-Interrogatory: I base my opinion on my experience in sailing vessels for sixteen years, and also my experience during the past fifteen years in buying and selling vessels.

8th Cross-Interrogatory: Upon what do you base your opinion as to the cost of building and equipping a vessel, similar to the Argo? Have you ever owned, built or sold such a vessel? If you have built or sold any such vessel, for whom did you build her, and to whom did you sell her? Give names and residences?

Answer to 8th Cross-Interrogatory: I never owned as big a yacht as the one in question, but I base my opinion on the same facts as stated in my onswer to the seventh cross-interrogatory.

9th Cross-Interrogatory: Who was present at the taking of this deposition, besides the officer who propounded the interrogatories and yourself?

Answer to 9th Cross-Interrogatory: The only person present at the time of the taking of this deposition, besides the officer who propounded these interrogatories and myself, was Mr. J. J. E. Linton, a court stenographer.

(Signed) EDWARD H. GILLMAN.

Subscribed and sworn to before me this 8th day of June, 1897.

(Signed) CHARLES T. WILKINS,
Notary Public.

DEPOSITIONS OF DAVID M. COCHRANE AND W. J. BABCOCK.

June 15th, 1897.

Oscar M. Springer, :
vs. : No. 13,319.
Norwegian S. S. Albert Dumois. :

Testimony of David M. Cochrane and W. J. Babcock both residing in the City of Chicago, Illinois, taken under commission issued in the above entitled and numbered cause, before

Rose A. Canfield, a Notary Public in and for the County of Cook, City of Chicago, State of Illinois, on the 25th and 26th days of May, 1897.

DEPOSITION of W. J. BABCOCK.

W. I. Babcock, being duly sworn to tell the truth, the whole truth and nothing but the truth, by said Notary, says:

1st Interrogatory: What is your name, age, residence and business, and what has been your residence and business for the past ten years, or more?

Answer to 1st Interrogatory: W. I. Babcock, thirty-eight years of age, reside at Hotel Windermere, Chicago, Illinois. Occupation is Manager of Chicago Ship Building Company. Have been in Chicago about seven and one-half years and prior thereto I was Superintendent of Union Dry Dock Company in Buffalo, New York, for two and one-half years.

2nd Interrogatory: What experience, if any, have you had in the building, buying and selling of steam vessels, steam boats, steam yachts, and the like?

Answer to 2nd Interrogatory: For ten years I have been at the head of ship building companies and previous to that, for nearly ten years, I have been employed in ship yards and by steamboat companies.

3rd Interrogatory: Did you have any knowledge of the steam yacht Argo formerly called the Leila—in September, 1895, or any other time? and if yes, how was that knowledge acquired? State fully?

Answer to 3rd Interrogatory: The steam yacht "Argo" came to Chicago in the spring of 1892, having been purchased by the Argonaut Club of Chicago, in Detroit, Michigan. She was brought to the yard of the Chicago Ship Building Company and there certain repairs were made to fit her for service. These consisted principally in overhauling the plumbing, painting the boat and making some alterations in the spars, for which work the owner paid us $296.23. During the summer of 1893, the boat was in constant use by the members of the Argonaut Club, and I was on board of her several times. It developed before the end of the season that the hull of the boat was in very bad condition and unsafe without extensive repairs. About October or November, 1892, the boat was placed in one of the docks beloging to Miller Brothers Dry Dock Company in Chicago, and during the winter she was thoroughly rebuilt. All the out side planking, which I think was 1¾ inch yellow pine, was removed and replaced completely by 2 inch oak. The old deck was removed and steel deck stringers fitted, extending on each

side of the boat for the length of the house, and steel belts carried down at intervals to stiffen the sides. A new deck complete of white pine was fitted. The iron frames were strapped with iron across the keel which had not been done when the boat was originally built. Probably certain other work was done on the boat which I do not now recall. As Miller Brothers are not iron workers, the iron work above referred to, was applied by my company, for which our bill was $220.21. The total bill of Miller Brothers who did all the rest of the work, was about Ten Thousand ($10,000.00) Dollars. All the work done on the boat was nominally under my supervision and I made several trips to Miller Brothers' dry dock during the winter for examination and inspection of same.

Since the boat came out in the spring of 1893, I have had no direct knowledge of her condition or what work was done upon her, except that I have heard that there was a good deal of trouble with the boiler, furnace and tubes, and that they were finally completely renewed.

4th Interrogatory: If you state that you had knowledge of said Argo, please state how it was acquired, when acquired, and if you know, state whether any repairs, improvements, or alterations had been made on or to the Argo's hull, or any other part of her since she was first commissioned, and if yes, please state when they were made, what they consisted of, and how they effected the boat as to strength her seaworthiness, and her value. Describe fully what was done to her?

Answer to 4th Interrogatory: This question is answered as above. In my judgment, the repairs made to the boat during the winter of 1892 and 1893 made her a much stronger and more seaworthy vessel than she had ever been before, even when first built.

5th Interrogatory: Now supposing that the Argo had been kept in first class condition, that she had been inspected by the duly authorized local inspectors, and passed in September, 1896, and that as late as January 4, 1897, her boiler had again been thoroughly examined and tested to a hydrostatic pressure of 186 pounds, and was found sufficient in strength to be allowed a safe working pressure of 124 pounds, and that her working pressure was allowed at 124 pounds, and her safety valve set at 124 pounds, and that nothing had occurred between said 4th day of January, 1897, and the day of her loss on the morning of January 28, 1897 what in your judgment would be a fair market value of said Argo at the time of said loss, on said January 28th, 1897.

Answer to 5th Interrogatory: Assuming that these statements are all correct, I should say that the boat was worth about seventeen thousand five hundred ($17,500.00) dollars.

6th Interrogatory: What in your judgment would be the cost of building and equipping a vessel of the kind and class of the Argo in January, 1897?

Answer to 6th Interrogatory: From twenty-five to thirty thousand dollars, depending on the boiler. A yacht is a good deal like a suit of clothes. A fashionable tailor will ask and receive much more for practically the same suit than a man in a small store on a side street, and the price received by a small and unknown builder for such a boat as the "Argo" would doubtless be considerably less than would be charged for the same boat by such a firm as the Hereschoffs, who built this boat.

7th Interrogatory: State any other matter or thing you may know in this controversy, which is concerning the loss of the Argo in January, 1897, and her value at said time, as fully and particularly as if thereunto specially interrogated?

Answer to 7th Interrogatory: Nothing further to say.

Cross-Interrogatories:

1st Cross-Interrogatory: When and where, did you last see the Steamer Argo?

Answer to 1st Cross-Interrogatory: In January or February, 1896, at New Orleans, La. on the opposite side of the Mississippi river from where I was.

2nd Cross-Interrogatory: By whom, and when, was said Steamer Argo built, and for whom was she built; give the names and residences of the builders and original purchaser, or purchasers, and give the purchase price?

Answer to 2nd Cross-Interrogatory: I understand that the "Argo" was originally called the "Leila" and was built by the Hereschoffs at Bristol, R. I., about 1878. I do not know who she was built for, nor do I know the purchase price.

3rd Cross-Interrogatory: Has not Oscar M. Springer, or some other person, orally or in writing, made suggestions to you, as to the answers you should make as to the interrogatories, or some of them, propounded under this Commission?

Answer to 3rd Cross-Interrogatory: No.

4th Cross-Interrogatory: Did you make the repairs, improvements and alterations inquired about, in the 4th direct interrogatory? If not how do you know what the same cost?

Answer to 4th Cross-Interrogatory: The fourth direct interrogatory put to me is answered partly in the answer to the third direct interrogatory. As that answer shows that some of the repairs, improvements and alterations there specified were made by my company, I am therefore familiar with the bills rendered.

In regard to Miller Brothers' bill, which I have stated as being about ten thousand ($10,000.00) dollars, I was familiar at the time with the amount of this bill, because the work done was done partly under my supervision and inspection, and all the bills were O K'd by me before being paid by the owners. There was a dispute between Miller Brothers and the owners about the amount of bill and I secured for the owners a slight reduction in same before payment. I do not remember the exact amount of the bill, but as before stated, it was about ten thousand ($10,000.00) dollars.

5th Cross-Interrogatory: Who was present at the taking of this deposition, besides the officer who propounded the interrogatories and yourself?

Answer to 5th Cross-Interrogatory: Nobody.

(Signed) W. I. BABCOCK.

Subscribed and sworn to before me this 25th day of May, A. D. 1897.

[Seal] (Signed) ROSE A. CANFIELD,
Notary Public.

David M. Cochrane, being duly sworn to tell the truth, the whole truth and nothing but the truth by said Notary, says:

1st Interrogatory: What is your age, name, residence and business, and what has been your residence and business for the past ten years, or more?

Answer to 1st Interrogatory: David M. Cochrane, fifty-nine years of age; reside and have resided at 3530 Ellis Avenue, Chicago, Illinois, for the past ten years; my business is master of steamboats, in which business I have been for the past ten years and more.

2nd Interrogatory: What experience, if any, have you had in the building, buying and selling of steam vessels, steam boats, steam yachts, and the like?

Answer to 2nd Interrogatory: I have superintended the building of vessels and have been in the steamboat business and been master of same for the past thirty-five years; have also been owner of steamboats.

3rd Interrogatory: Did you have any knowledge of the steam yacht Argo, formerly called the Leila, in September, 1895, or at any other time? and, if yes, how was that knowledge acquired? State fully?

Answer to 3rd Interrogatory: In the fall of 1895 I went aboard the Argo to examine her for Mr. Oscar M. Springer, as he wanted to know the condition of the boat before buying her,

and I found her hull in first class condition and recommended the boat to him as being a good boat in every respect.

4th Interrogatory: If you state that you had knowledge of said Argo, please state how it was acquired, when acquired, and if you know, state whether any repairs, improvements, or alterations had been made on or to the Argo's hull, or any other part of her since she was first commissioned, and if yes, please state when they were made, what they consisted of, and how they effected the boat as to strength her seaworthiness, and her value. Describe fully what was done to her?

Answer to 4th Interrogatory: When I went aboard the Argo in the fall of 1895 I found her in a sea-worthy condition and in good shape throughout, and I knew from what I saw that there had been a large amount of repairs made. I saw her during the season of 1893 very often. I do not know when the repairs were made, except what Mr. Babcock told me when I went to see him in regard to the amount that had been expended upon the boat, and then he told me that the boat had been repaired under his supervision and to his knowledge over Ten Thousand ($10,000) dollars' worth of repairs had been made upon her during the winter of 1892 and the fore part of 1893, I think it was. The repairs as I saw them, certainly would make the boat more staunch and sea-worthy.

5th Interrogatory: Now supposing that the Argo had been kept in first class condition, that she had been inspected by the duly authorized local inspectors, and passed in September, 1896, and that as late as January 4th, 1897, her boiler had again been thoroughly examined and tested to a hydrostatic pressure of 186 pounds, and was found sufficient in strength to be allowed a safe working pressure of 124 pounds, and that her working pressure was allowed at 124 pounds, and her safety valve set at 124 pounds, and that nothing had occurred between said 4th day of January, 1897, and the day of her loss on the morning of January 28, 1897, what in your judgment would be a fair market value of said Argo at the time of said loss, on said January 28th, 1897?

Answer to 5th Interrogatory: From between eighteen to twenty thousand dollars.

6th Interrogatory: What in your judgment would be the cost of building and equipping a vessel of the kind and class of the Argo in January, 1897?

Answer to 6th Interrogatory: That would depend entirely upon the builders. I should say from Twenty-six to Thirty-two Thousand dollars.

7th Interrogatory: State any other matter or thing you may

know in this controversy, which is concerning the loss of the Argo in January, 1897, and her value at said time, as fully and particularly as if thereunto specially interrogated?

Answer to 7th Interrogatory: No.

Cross-Interrogatories.

1st Cross-Interrogatory: When and where did you last see the Steamer Argo?

Answer to 1st Cross-Interrogatory: In the fall of 1895, in Chicago.

2nd Cross-Interrogatory: By whom and when was said Steamer Argo built, and for whom was she built; give the names and residences of the builders and original purchaser or purchasers, and give the purchase price?

Answer to 2nd Cross-Interrogatory: Do not know.

3rd Cross-Interrogatory: Has not Oscar M. Springer, or some other person, orally or in writing, made suggestions to you as to the answers you should make to the interrogatories or some of them propounded under this Commission?

Answer to 3rd Cross-Interrogatory: No sir.

4th Cross-Interrogatory: Did you make the repairs, improvements and alterations inquired about in the 4th direct interrogatory? If not, how do you know what the same cost?

Answer to 4th Cross-Interrogatory: No.

5th Cross-Interrogatory: Who was present at the taking of this deposition, besides the officer who propounded the interrogatories and yourself?

Answer to 5th Cross-Interrogatory: Nobody.

(Signed) DAVID M. COCHRANE,

Subscribed and sworn to before me this 26th day of May, A. D. 1897.

[Seal] (Signed) ROSE A. CANFIELD,
Notary Public.

DEPOSITION OF THOMAS E. MILLER.

Filed Dec. 16th, 1897.

Oscar M. Springer, :
vs. : No. 13,319.
Norwegian S/S Albert Dumois. :

Testimony of Thomas E. Miller, residing at Chicago, Illinois, taken under commission issued in the above entitled and numbered cause, before David K. Cochran, a Notary Public in and for the County of Cook, State of Illinois, on the 24th day of September, 1897.

Thomas E. Miller being duly sworn to tell the truth, the whole truth and nothing but the truth, by said Notary, says:

1st Interrogatory: What is your age residence and business, and what has been such residence and business since the year 1890?

Answer to 1st Interrogatory: Age is 63 years. Residence is No. 569 La Salle Ave., Chicago, Ill. Business is President of Miller Bros. Dry Dock Co., Chicago, Ill. Residence and business the same for many years.

2nd Interrogatory: Do you know the steam yacht Argo, and if yes, when and where and how long have you known her?

Answer to 2nd Interrogatory: I do. First saw her in 1891, in Chicago, and have known her since that time until she left this port.

3rd Interrogatory: If you answer that you know the Argo, and knew and saw her as late as September, 1895, as well as previous thereto, please state what experience (if any) you have had in the building, repairing, buying and selling of steam vessels, and the class of such vessels to which your experience has extended?

Answer to 3rd Interrogatory: Have had no experience in buying and selling, but have had in repairing and building steam and sail vessels for thirty-five years. Have repaired all kinds of sailing and steam vessels large and small, and have built many steam tugboats. Have repaired vessels and steamboats from the smallest to the largest size.

4th Interrogatory: Do you know whether any repairs, alterations, or additions were made to the Argo since the year 1890, and if yes, please state when, and where they were made, what they consisted of and what was the cost and price thereof, and what effect the same had on said Argo and her value and usefulness?

Answer to 4th Interrogatory: I do. In the fall of 1892 and winter of 1892 and 1893 there were extensive alterations and repairs made in the Str. Argo, at our dry dock in Chicago. The work consisted of new planking all over on the outside, new decks, covering boards, and rails, and caulking, and new deck beams were put in. A great deal of machinery, boiler and blacksmith work was done at the same time. Plates were put under the decking to strengthen her sides and other work done. Our

bill for the work which he did, which was the carpenter work, was fifty-seven hundred forty-six and 32-100 dollars ($5746.32). I do not remember how much the other work cost. Again in 1895 we did one hundred and seventy-eight 78-100 dollars work additional. This work made the Argo an A No. 1 boat, and put her in splendid shape. Made her a better boat than before the work was done and she was worth more money. Made her a better boat than when she was built.

5th Interrogatory: If you state the Argo was repaired, to your knowledge, and you describe what was done to her, and the cost thereof, please state the last time you saw her, and what in your judgment was a fair value of said Argo at said time, and if you have, or can get a photograph or picture of her as you saw her and know she was at said time, please annex the same to your answer to this question?

Answer to 5th Interrogatory: The last time I saw the Argo was in the fall of 1895 just before she left this port. In my judgment at that time she was worth from twenty to twenty-five thousand dollars ($20,000 to ($25,000).

6th Interrogatory: Suppose the Argo from the time you last saw her had been kept in first-class condition, in every way, and that as late as January 4th, 1897, her boiler had been thoroughly examined and tested to a hydrostatic pressure of 186 pounds and was allowed a working pressure of 124 pounds and her safety valve was fixed at 124 pounds and that she was lost only on the 28th day of January, 1897, and nothing had happened to impair her value what in your judgment would be a fair market value for said Argo at the time of her said loss on said 28th day of January, 1897?

Answer to 6th Interrogatory: She would have been worth just as much as the value given in the previous answer. Twenty thousand to Twenty-five thousand dollars, if not more.

7th Interrogatory: What in your judgment would it cost to replace the Argo in the same condition as she was the last time you saw her?

Answer to 7th Interrogatory: Thirty thousand dollars ($30,000) at least, and I am not sure she could be replaced for that.

8th Interrogatory: State anything else you may know concerning said Argo and her value as fully and particularly as if thereunto specially interrogated?

Answer to 8th Interrogatory: I do not recall anything further

Cross-Interrogatories.

1st Cross-Interrogatory: Did you repair the Argo yourself; and if not, who did, and when were the repairs made?

Answer to 1st Cross-Interrogatory: The Argo was repaired

at our dock, by our men, under my supervision. Repairs were made in the fall of 1892 and winter of 1892 and 1893 and also repairs in 1895.

2nd Cross-Interrogatory: At whose request, and for whose account were the repairs made, and who paid for the same?

Answer to 2nd Cross-Interrogatory: The repairs in fall of 1892 and winter of 1892 and 1893 were made at the request of Argo boat club and they paid the bills. The work in 1895 was done for Mr. Springer I believe, and he paid the bills.

3rd Cross-Interrogatory: When and by whom was the Argo (originally named Leila) built and equipped, and what was paid for her, when new?

Answer to 3rd Cross-Interrogatory: Don't know.

4th Cross-Interrogatory: Annex to your answer a detailed account of the repairs made to the Argo, to which you may have referred, and state whether the same is a true and correct account, and shows the amount paid for such repairs, without discount?

Answer to 4th Cross-Interrogatory: It would take our book-keeper a day to copy this bill from the books and I haven't the time to spare now to let him do it.

5th Cross-Interrogatory: Have you not consulted with Oscar M. Springer, Libellant, or some one else, as to your answer to these interrogatories, and received from him, or some one else, suggestions as to what your answers should be?

Answer to 5th Cross-Interrogatory: I have not.

6th Cross-Interrogatory: Who, beside yourself and the officer taking your deposition, was present at your examination?

Answer to 6th Cross-Interrogatory: No one.

(Signed) THOS. E. MILLER.

Subscribed and sworn to before me this 24th day of September, 1897.

[Seal] (Signed) DAVID N. COCHRAN,
Notary Public.

TESTIMONY OF CAPTAIN NICHOLAS DEEDES, FOR LIBELLANT.

Filed December 16th, 1897.

Oscar M. Springer, :
vs. : No. 13,319.
Steamship Albert Dumois. :

Testimony taken in the above entitled and numbered cause

on behalf of Libellant, on the 18th day of March, 1897, before Frank H. Mortimer, Esq., United States Commissioner.

Appearances:

R. De Gray, Proctor for Libellant,
Rouse & Grant, Proctors for Claimant.

Nicolas Dedes, witness sworn on behalf of libellant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. What is your business?

A. Pilot.

Q. On the Mississippi river?

A. On the tug, yes, sir; on the Mississippi river.

Q. Where were you on the night of January 27th last?

A. I was, during the day I was going down the river with luggers. We got down to the Canal about half past 11 o'clock, and landed the luggers there.

Q. What Canal?

A. They call it Saline or Salt Works.

Q. New Canal?

A. It goes by the name of Salt Works, New Canal.

Q. What tug were you on?

A. I was on the Day Dream.

Q. You were the pilot?

A. Yes, sir.

Q. Did you make any landing near the canal?

A. Yes, sir; we made a landing and landed the luggers at the same time, one of the luggers made a landing and got adrift the Admiral take it off, she got a drift, it was about 12 o'clock by the time we got through with the other luggers.

Q. How far did you land below the Canal?

A. We made a landing first at the Canal with these luggers and one of the luggers got adrift, then we went after her about 12 o'clock we went after this lugger.

Q. Did you get a hold of her?

A. Yes, sir.

Q. What did you do with her?

A. We came up with her and made a landing just below the Canal.

Q. Was there any boat in the river that gave any signal to you?

A. We were about making a landing when the Argo blew one whistle.

Q. Did you make any reply?

A. Yes, sir; we answered.
Q. With one whistle?
A. Yes, sir.
Q. After that did she blow any?
A. She blew one whistle again.
Q. What was the next thing?
A. I heard another boat blow two whistles, it must have been the Dumois.
Q. Did you see where the Dumois was when she blew the two whistles?
A. She was just behind the Day Dream.
Q. On the east shore?
A. Yes, sir; coming up hugging the shore.
Q. Well then, when the Dumois blew two whistles, did she keep her course, or did she change her course?
A. When she blew two whistles, that drew my attention, and I went over to the side of her and looked and I saw the Dumois crossing the river, I saw her green shooting across.
Q. After the Dumois blew two whistles, did the Argo blow another whistle?
A. Yes, sir; she blew another whistle.
Q. She blew one blast?
A. Yes, sir.
Q. After that what did you hear, if any thing?
A. The Dumois blew her danger whistle, four whistles.
Q. Then did anything occur after that?
A. Then the Argo answered the same, with the danger signal.
Q. Did you see the boats when they came together, or about when they came together?
A. I saw them when they were separated.
Q. Where were they then, on the west bank or east bank or in the middle of the river?
A. They seemed to be right in the middle of the river when they struck, a little more to the other side.
Q. How long have you been a pilot on the river?
A. Not very long.
Q. Well, about how long?
A. I have been running on the river since the last eight years, up and down the river.
Q. What is the course for a steamer coming down the river to take?
A. I don't think there is any particular course to take, especially in that reach.
Q. The river is straight there?
A. Yes, sir; almost.

Q. When steamers come down there, how did they go, in the middle of the river with the current?

A. It depends, some go in the middle of the river, some hug one shore a little than others.

Q. When a vessel is coming down stream, would'nt she get the benefit of the current by being in the middle of the river?

A. Yes, sir.

Q. Wouldn't that be her natural place to be, in the middle?

A. Yes, sir; the best place, in the middle of the river.

Q. When you saw the Argo first, when she blew her whistle, after you saw—was she coming down in the current or where was she?

A. There is a current there from one shore to the other.

Q. Is it not heavier in the middle of the river than anywhere else?

A. It depends how the wind blows.

Q. The way it was blowing this night, where would the current be heaviest?

A. On the other shore.

Q. On the west shore?

A. Yes, sir.

Q. Please look at this paper which I now show you—you say it is the New Canal marked on one side and there is an arrow which indicates the direction of the wind blowing from North to South. On this same picture are the boats, one apparently going up and crossing the river, and the other coming down. Tell us by that picture whether you, by looking at that picture you can place the position of the Argo and the Dumois before the collision and at the time of the collision occurred?

A. What you want me to explain by this—(Witness looking at the paper referred to by counsel.)

Stenographer is asked to read the question, which he does.

Q. This is the east bank here and this over here is the west bank on this side.

A. It is almost correct. That is all I can make of it.

Q. First—here is a boat with a circle around the side of it with the figure one in it—what do you take that to be, what boat do you call that?

A. I suppose it was the Dumois, she was the only boat going up at that time?

Q. After the Argo blew her whistle, as you have stated the Dumois blew one whistle and then crossed over the river?

A. How crossed the river?

Q. The Dumois blew two whistles?

A. Yes, sir.

Q. And went across the river?

A. She went shooting across the river, I could see her green light.

Q. This No. 2 boat would be when you saw her going across the river?

A. Yes, sir.

Q. Here is No. 6 boat, what would you think—what would you take that to be, No. 6 boat coming down the river? Would you take that to be the Argo coming down?

A. The only boat coming down at the time was the Argo.

Q. Now, then, when you first saw her it blew one whistle?

A. Yes, sir.

Q. Then afterwards—and the Day Dream answered that one whistle?

A. Yes, sir.

Q. That would be when she would be about there and you down here?

A. No, sir. Somewhere about where No. 5 is.

Q. Here is another one with Number 3, where it appears from this picture that the two vessels came together, what would you say to that?

A. That is correct, it was just abreast of the Day Dream where they came together.

Q. The position where the Dumois is, just below No. 3, is the place when she blew her danger whistles? Or did she blow them before she got there?

A. Before she got there.

Q. Well, then, the point of the collision would be right opposite where the Day Dream lay on the shore?

A. Yes, sir.

Q. A little to the westward of the middle of the river?

A. Something like that, in the middle of the river or a little more to that side.

Q. A little more to the west side?

A. Yes, sir.

Counsel for libellant offers in evidence diagram marked Libellant 3.

Q. You say you saw them when they separated, after they struck and they separated?

A. Yes, sir.

Q. How did they go then, did the Dumois go up the river?

A. The Dumois stopped.

Q. The Dumois stopped but she stopped after the collision occurred?

A. I don't know when she stopped, but anyhow they both stopped, seem to be about two or three hundred yards apart, it seemed that way.

Q. Did you see the small boat in the water after the collision occurred?

A. I saw two bright lights on the little boat, supposed to be the little boat.

Q. On the Argo?

A. Yes, sir.

Q. How long was it before those lights disappeared?

A. Between five and ten minutes.

Q. Where were the lights on the Argo that you saw, could you tell?

A. One was somewhere on the forward and one on the after end or middle of the boat, they were far apart.

Q. Where were the lights at that time—when you saw the lights on the Argo, where was the Dumois at that time?

A. She was drifting down, she was stopped.

Q. Was there any distance between the Argo and the Dumois?

A. I told you, about two or three hundred yards.

Q. Which was the farthest up the river?

A. The Dumois.

Q. About where was the Argo when her lights disappeared, was she opposite the Day Dream?

A. Yes, sir; a little bit below where the Day Dream lay, he drifted a little, it was a heavy current, he must have drifted, of course, down stream.

Q. Have you been along the bank there, on the east side, often?

A. Yes, sir.

Q. How is the water on the east side of the river, is there plenty of water there?

A. Right below the Canal there, there is, about three or four hundred yards, the water is—the bank is not up and down, but still there is plenty of water about 10 yards from the shore.

Q. There is enough water for a big ship?

A. Yes, sir.

Q. You say that is pretty nearly a straight reach, right down there, for some distance?

A. Yes, sir; from the Canal downwards.

Q. For how long is it, for a couple of miles is the river pretty nearly straight?

A. Yes, sir; for three miles.

Q. For the whole of those two miles there is plenty of water on the east bank?

A. Yes, sir.

Q. Just as you have said, from ten to 15 yards from the shore?

A. Yes, sir; plenty of water.

Cross-Examination.

By Mr. Grant:

Q. You say just below the Canal, the bank goes out shelving?

A. Below the Canal a little.

Q. The water is not as deep just below the Canal as it is above?

A. You can't lay alongside the bank, you can't get right close to the bank.

Q. How far out does that shallow water extend?

A. About ten or 15 feet. It is not shallow water it goes down gradually, it deepens gradually.

Q. Do you know how much water there is after you get 30 feet from the shore?

A. I don't know exactly, but there is plenty of water for any ship to go through.

Q. How—

A. For any big steamship that goes up the river.

Q. How did the lugger get away from you?

A. She let go her lines trying to make a landing, the wind was blowing from the shore, and she missed her landing.

Q. And then she floated out into the stream?

A. Yes, sir.

Q. Did she have sail up?

A. No, sir.

Q. Where were her sails?

A. I don't know whether she had any sails or not, even if she did she couldn't hoist any sails, everything was frozen up, they couldn't use any lines.

Q. I asked you where her sails were?

A. I don't know whether she had any or not.

Q. Didn't she have any sails up, or not?

A. I don't know, but she couldn't use any sail if she had.

Q. How far out did she float, out in the river?

A. About three miles from the Canal.

Q. Down stream?

A. Yes, sir; she went across to the other side, going down stream at the same time to the other side.

Q. How long before the Argo came down, did you succeed in getting her into her landing?

A. We had pust made the landing when the Argo blew one whistle, just about made the landing.

Q. You were just tieing up in there?

A. Yes, sir; just making the landing.

Q. The Argo first blew when she [was] opposite you, didn't she?

A. No, before she got to us, she was far up above us.

Q. How far up?
A. It might be 50 yards, 150 feet above us.
Q. How large a tug is the Day Dream?
A. She is about 100 feet.
Q. Has she got a pilothouse on her.
A. Yes, sir.
Q. How high is it?
A. From the main deck?
Q. Yes.
A. About ten feet.
Q. How high is the main deck from the water?
A. About three feet.
Q. Where was the pilot house—where was the wheel?
A. The wheel was in the pilot house.
Q. Inside the pilot house or on top?
A. It was inside.
Q. The pilot house was covered with glass?
A. Yes, sir; it has got glass windows in it.
Q. You are sure that the vessels came together opposite the Day Dream?
A. Yes, sir.
Q. Just opposite the Day Dream?
A. Yes, sir; or a little above, or a little below, about opposite.
Q. And the Day Dream then was landing at the bank, about how far from the Canal below?
A. About 200 yards from the Canal.
Q. Below the Canal?
A. Yes, sir.
Q. When did the Argo whistle the second time?
A. A short time after, they blew one whistle again.
Q. And she passed you then?
A. No, she had not passed us then.
Q. She first blew for the Day Dream about 150 feet above her?
A. Yes, sir.
Q. And when she got opposite you she blew one whistle again?
A. Yes, sir; not quite opposite us yet.
Q. She had not got down right opposite?
A. I didn't pay any attention to that boat all the time, I wasn't taking notice of the boat at all.
Q. I wasn't asking you that, you came here to testify—
A. I testify what I know, I don't know exactly, I wasn't paying attention.

Re-direct Examination.

By Mr. De Gray:

Q. You have been asked about how high the pilot house was, etc., but when you saw the Dumois coming up the bank on the east bank, as you have described, were you in the pilot house at that time?

A. No, sir; I was on the main deck.

Q. On which side of the Day Dream were you, on the starboard side or on the port side?

A. When I heard the two whistles, I went on the port side, I could not see from the starboard side.

Q. You went on the port side and looked down the river?

A. Yes, sir.

Q. And it was then that you first saw the Dumois?

A. Yes, sir; I saw the green light.

Q. You say when you heard the Argo whistle and saw her coming down the river, you were in front of the pilot house?

A. I was on the starboard side.

Q. And you looked up the river?

A. No, sir; I was looking on the bank. When I heard the whistle blow I looked up. I was just making a landing and my attention was drawn to the whistle.

Q. After you heard the signal from the Dumois, to the time that the two boats came together, and then separated, as you have described, was there anything to interfere with your seeing them?

A. No, sir.

Q. You were then standing on the port side of your boat, looking at them while they were out in the river?

A. Yes, sir.

Re-cross-Examination.

By Mr. Grant:

Q. After the two vessels separated, when the collision was over, you saw the Argo floating away?

A. Yes, sir; I saw two lights, must have been on the Argo.

Q. What lights did you see?

A. I saw two bright lights.

Q. Didn't you see a green and red light?

A. No, sir; not after the collision, I couldn't see no green nor red light.

Q. You saw neither green nor red light?

A. Not after the collision, no, sir.

Q. How far apart were the bright white lights?

A. They were a good bit apart, I couldn't exactly tell you how far apart, a good bit apart.

Q. You are sure you didn't see either the red or green light?

A. Yes, sir; I am sure.

Q. What were the first lights you saw on the Dumois?

A. I saw the green light.

Q. When was that, when did you see that green light on the Dumois?

A. After she blew two whistles, after the Argo blew one whistle and I heard some other boat answer with two whistles, that made me go on the other side of the boat and then I saw the green light on the boat coming up.

Q. You didn't see any green light until you heard—

A. I didn't see any light at all of any kind until I heard the whistle, I didn't know there was any boat coming behind us.

Q. You didn't look to see?

A. No, sir; we were making a landing and I was looking on the bank.

Q. You were not looking down the stream?

A. No, sir; it was not necessary to look behind when we are making a landing.

Q. You never looked behind?

A. No, sir; not at that time.

Q. Where was the green light when you saw it?

A. It was on the starboard bow.

Q. In what direction from the Day Dream, opposite the Day Dream?

A. No, it was behind the Day Dream down the river. She was coming up from behind us.

Q. Do you know how far off she was?

A. I couldn't say, she was a good bit off from the Day Dream when I first saw her.

Q. She was a good bit off below you?

A. Yes, sir.

Q. Where was the Argo then?

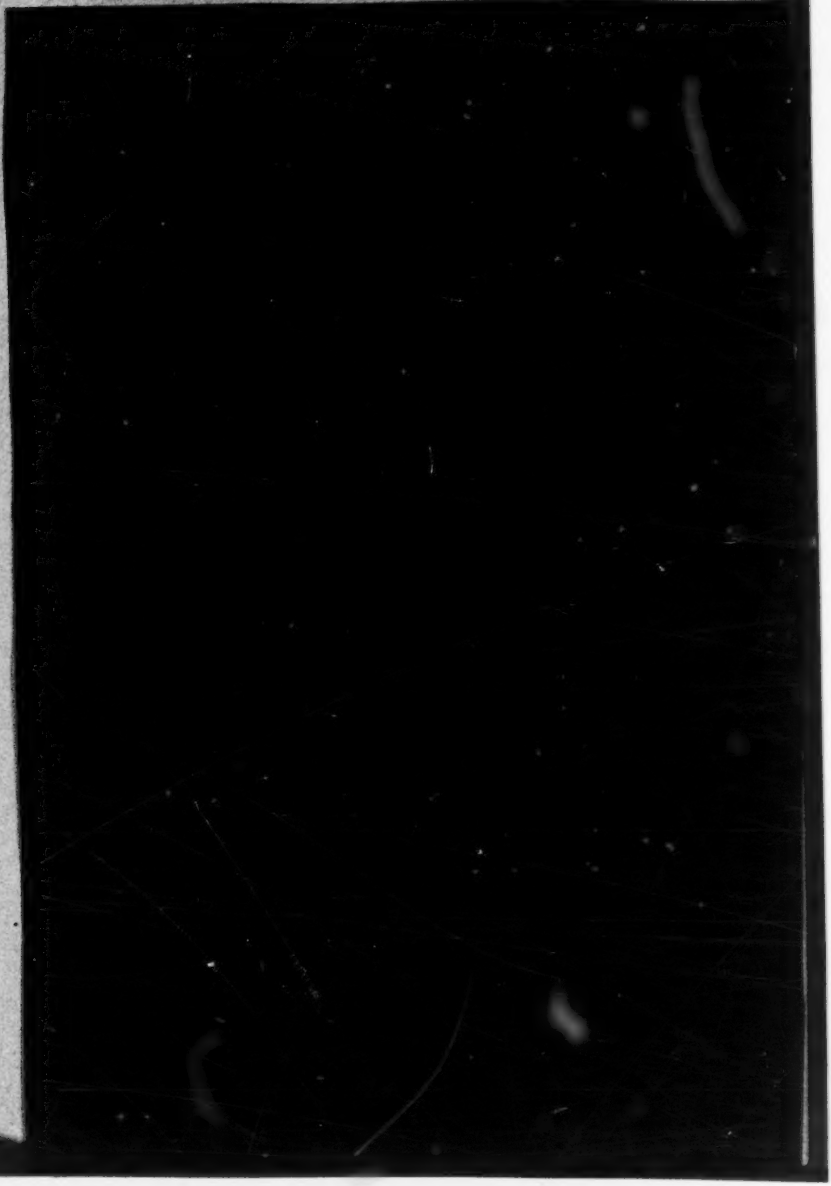
A. I have already told you, the Argo was coming down the river, she must have been above the Day Dream, I didn't pay any attention from one boat to the other.

Q. She was above the Day Dream?

A. She must have been above the Day Dream when she blew one whistle, she blew one whistle first, then she kept on coming down, she couldn't be in the same place always.

LIBELLANT 3.

Picture of Boats, Offered in Connection with Evidence of Deedes and Jurisch, Marked "Libellant 3."



TESTIMONY A. C. LINDAUER AND E. A. CONRAD FOR LIBELLANT.

Taken on the 17th Day of March, 1897, Before Frank H. Mortimer, U. S. Commissioner; and Filed December 16th, 1897.

Appearances: R. De Gray, Proctor for Libellant; Rouse & Grant, Proctor for Claimant.

A. C. Lindauer Witness Sworn on Behalf of Libellant, Testified as Follows:

Direct Examination.

By Mr. De Gray:

Q. What is your business?

A. I am a newspaper reporter.

Q. Where were you on the evening of January 27th, 1897?

A. After 6 o'clock I was on board the Argo.

Q. Going where?

A. Going down towards the Mouth of the river.

Q. You were going on a trip to the Jetties and back?

A. Yes, sir.

Q. You started at about what hour?

A. I think it was six—

Q. Between six and seven o'clock?

A. Yes, sir.

Q. What time did you retire—did you retire, rather, first?

A. Yes, sir.

Q. What time?

A. I laid down about half past nine o'clock as near as I can remember.

Q. How were you awakened?

A. I was awakened by a terrific shock and was thrown out on the cabin floor.

Q. What did you do then?

A. I stood up on the floor and the others rushed towards the bottom of the companion way, the nigger cook grabbed me by the arm and tried to pull me up the companion way, the others were in the companion way, however, and four of us tried to get up the narrow pair of steps and it looked like nobody could get up, I said to the cook let me go, there is no use of being scared, so he let me go and he rushed up the companion way followed by the other three, I was about the last to get up on deck.

Q. Who were the other three?

A. Hester and Blesini, reporters, and Mr. Frantz an undertaker—

Q. And yourself constituted the four passengers?

A. Yes, sir.

Q. That were in the cabin of the Argo?

A. Yes, sir.

Q. Please describe what occurred after you got on deck?

A. After I got on deck I looked forward, towards the bow, and noticed that the bow was depressed a little—when I saw the bow was depressed I saw also the others start down into the cabin to return to the cabin and I returned to the cabin also, I had my clothes all piled up at the foot of the bunk I occupied, which was on the after part, the bunk right at the foot of the companion way were my clothes and the type-writer.

Q. When you first came out of the cabin, could you have any idea where the Argo was, in the river?

A. Yes, sir; the first thing I looked for was to see how far we were from the shore, thinking I might have to swim.

Q. What did you do then?

A. I saw a woody shore, trees, I couldn't tell which side it was, whether it was the east or west bank, but, as near as I could judge well, between 200 and 250 feet I should judge from the shore was where the Argo was, as near as I could judge.

Q. Feet or yards?

A. About 250 feet, 100 yards is about—well, about 100 yards is about the distance I judge it was, of course, you see it was dark, although it was a clear night, there was no moon out.

Q. And you had just come up from below?

A. Yes, sir; I was just woke out of a sleep by that tremendous shock, why, of course, I was not in a condition of mind to form an acurate judgment of what distance it was, but I did know it was a woody bank that we were near.

Q. Did you see those trees afterwards?

A. Yes, sir, I saw them from the stern of the Dumois.

Q. On which side of the river were they, coming up?

A. They were on the—coming up the river I think they were on the left hand side, I think—

Q. That would be the Algiers side?

A. Yes, sir, the Algiers side of the river.

Q. Did you notice when you got on deck—did you see anything of the Dumois?

A. I didn't see anything of her then, sir; no sir. I looked right towards the bow of the boat, I didn't look towards the stern at all.

Q. There was nothing whatever at the bow of the..... when you came on deck?

A. There was nothing at all in sight.

Q. If there had been there, it had passed away?

A. Yes, sir, there was nothing in sight when I got on deck; that led me to infer that we had struck a stump or snag.

Q. How long did it take you, from the time the shock occurred until the time you go up on deck?

A. It was a very short time, a minute at the utmost, we all came on deck just as we were, in our under clothes, bare-headed and bare-footed.

Q. You came up just as quick as you could?

A. Yes, sir, the only obstruction was at the time the cook grabbed hold of me, thinking I had been hurt by the shock I suppose.

Q. You then went back, as I understand, to get your clothes?

A. Yes sir.

Q. You got your clothes and came on deck?

A. I got my clothes and what I thought were my shoes and the typewriter.

Q. Did Mr. Frantz get anything?

A. He got his clothes with the exception of a shoe and his over-coat.

Q. Did you see the other two men, Blessini and Hester go back in the cabin after they first came out on deck?

A. Yes sir, they preceded me back in the cabin.

Q. Did you have any conversation with them at all ?

A. No sir.

Q. Did you ever see them after that?

A. I saw Blessini after that.

Q. Where was he?

A. He came up on deck the second time and he had on his pants and shirt, and if I mistake not, his coat.

Q. What became of him after that?

A. I don't know, I started to pull on my clothes and pulling my shirt over my head the top button was buttoned, it was a blue flannel yachting shirt, and I had difficulty in getting my head through and I didn't care about pulling it off and unbuttoning it, so I just struggled until I got my head through and after I got my head through I looked towards where Blessini had been standing which was not over six feet from where I was and he had disappeared, as had also Mr. Frantz who was standing beside him. A few minutes after that Mr. Frantz came rushing up the companion way and was struggling with his overcoat, putting it on, and he rushed right for the yawl boat?

Q. The yawl boat was then in the water?

A. Yes sir, and all the crew and Captain Brown was aboard yelling for everybody to come on, that the boat was sinking.

Q. How long did the Argo float after you got into the yawl boat?

A. After I got into the yawl boat, I don't think it could have floated over a minute or a minute and a half.

Q. You had only got away when she went down?

A. Yes sir, just barely got away from her. The way I noticed that the wheel of the Argo was turning, was that somebody called out, look out you will go under her counter, and they took and oar and shoved the stern of our yawl boat away from the stern of the Argo, just then the stern of the Argo was lifted in the air.

Q. Which way was she heading then?

A. I couldn't say, I judge that she was heading up stream.

Q. But you don't know.

A. I don't know that to be a fact.

Q. Where was the Dumois then, do you know?

A. I didn't see her even then.

Q. At the time that you shoved off from the Argo, was the Argo making any headway through the water at all, or just floating?

A. That even I don't know, I know her wheel was in motion.

Q. Her wheel was under the water?

A. When I first noticed her wheel, but after we got a distance away from her, say probably 15 or 20 feet, I could see the wheel in the air and the revolution was so much faster that it had been under the water I thought she was fighting the air.

Q. After you got in the small boat, the yawl boat, did you make any effort to go anywhere with your boat?

A. After we got in the yawl boat and got clear of the wreck, we kept watching the wreck of the Argo and saw it disappear and—

Q. How was it disappearing, going away from you?

A. We were going away from that, there was a man paddling the yawl, at my suggestion—

Q. How were you paddling, up stream or down stream?

A. I suppose they were paddling up stream.

Q. Then, how could she go away from you unless under headway?

A. She might have drifted down.

Q. But were you not drifting?

A. Yes sir, but paddling against the current.

Q. If she was drifting down and you were paddling against the current, wouldn't that serve to bring you closer together instead of away from her?

A. It would under certain circumstances.

Q. How did it appear to you, didn't appear to you that she was going away from you?

A. Yes sir, we were moving away from her, or she was moving away from us, I couldn't say which, I know our paddles were going.

Q. Was your motion fast or slow?

A. It was very slow.

Q. Was her motion fast or slow?

A. That I couldn't say.

Q. How did it seem to you, did she seem to be going away from you fast?

A. Her motion carried her away from us or our motion carried us away from her, I don't know which, of course, paddling a yawl or steering a pirouge, you make very slow headway.

Q. Was the motion fast or slow that the two boats were separating?

A. It was pretty fast, it was about as fast as a man could row a boat.

Q. It was faster than you could pull a boat with seven people in it?

A. No, sir.

Q. Didn't that indicate that the Dumois was going away from you?

A. Now, that I think of it, it does, I didn't give it a thought before.

Q. When was it that you first saw the Dumois?

A. Fully five minutes after we got off of the Argo?

Q. Where was she?

A. She was some distance away from us, in what direction I couldn't say.

Q. She was up stream, was she not?

A. Yes sir, because we had to paddle to get to her and paddle mighty hard.

Q. How far did she seem to be away from you?

A. When I saw her we could barely distinguish the hull, the lights were plainly in sight when I first caught sight of her, but the hull I couldn't distinguish.

Q. When you were in the small boat, you could see the trees on the shore?

A. Yes sir, I could see the trees.

Q. Could you notice how close you were to the trees then?

A. No sir.

Q. Did you notice how close you were to the shore when the Dumois picked you up?

A. Not even then.

Q. Well, after you got on board the Dumois, did you notice how close you were to the shore?

A. Yes, sir.

Q. Which shore were you nearest to?

A. To the woody shore, on the west bank of the river.

Q. Then you were nearer to that shore than you were to the east shore?

A. Yes sir, decidedly.

Q. I want to ask you this—when you first got into the yawl and pushed away from the Argo, could you see the Dumois?

A. I didn't see her.

Q. How long had you been in the yawl boat before you saw the Dumois?

A. It was fully five minutes, if not longer.

Q. And how far then, was the Dumois away from your yawl boat?

A. I should judge about fully 300 yards, I think I could see her hull that distance that kind of a night.

Q. When you got into the yawl boat, what did you aim for first, or did you have any point to aim for?

A. We didn't aim for any particular point at all, we were just apparently I thought drifting around in the river, our principal aim was to get away from the wreck to keep from being drawn down by the suction of the vessel when she went down.

Q. Was there any effort made to reach the Dumois?

A. There was, afterwards, sir.

Q. After you saw her?

A. Yes, sir.

Q. Then you paddled up towards the Dumois?

A. Yes sir, we paddled through the wreckage, I thought I heard a voice and I took a match out of my coat pocket and struck it and held it in my hand this way, shading my eyes, and looking out, holding the match to signal whoever might have been calling, and to encourage them to hold on, I then asked them to paddle over there, we paddled over and passed through the wreckage and I saw life preservers floating on the surface of the water and looked very intently to see if I could discover the man, thinking it was the negro cook hollering. I couldn't see anything and we turned and passed back through the wreckage, even there I couldn't say positively whether we paddled through the wreckage or whether we just held our own through the current and let the wreckage drift past us. After that we made for the hull of the Dumois.

Q. Did she back down?

A. Her wheel was not in motion when we approached her.

Q. Could you tell whether it was in motion up the river, did you hear her propeller?

A. I can't remember that I heard it.

Q. When you got near enough to see, you saw it was not moving?

A. Yes sir, because we approached her by the stern, to avoid the flukes of her propeller, we steered a little wide. We came up on her starboard side and passed up until nearly amid-ships and sung out to lower away the ladder, they told us to go around on the other side, I said for God's sake we can't, we will be swamped, then they lowered away the ladder and we paddled up to the side, and Capt. Brown held on to the ladder and we got up.

Q. Didn't she change the ladder from one side to the other, didn't they have the ladder on one side and change it to the other?

A. They had it on the port side, they must have had it over there simply from that, they told us to go on the other side.

Q. How long have you known Blessini and Hester?

A. I had known Blessini, I had met him two or three times before.

Q. And Hester?

A. The first time I ever met him was on the Argo.

Cross-Examination.

By Mr. Grant:

Q. How long did you remain on board the Argo after she struck the Dumois?

A. After she struck?

Q. Yes.

A. I don't know exactly, but there was a discussion on the boat afterwards, on the Dumois, after we got aboard, about how long it took from the time she struck until she sunk, of course they pulled out their watches, Mr. Frantz and some others pulled ont their watches and they settled that it was four minutes from the time she struck until she went down, disappeared.

Q. She was under motion until you got off?

A. Yes sir, her wheel was going.

Q. Shortly after you got off, she went down by the head, then you saw her wheel revolving very rapidly in the air?

A. Yes, sir.

Q. Are you certain which way she was pointing?

A. No sir, I dont know which way she was pointing. I only infer that she was heading up stream from the fact that the lighter parts of her were up in the air and I thought that they

would possibly float longer than the submerged portion which was the bow, and the lighter portion would trend the way the current was running.

Q. You thought that would occur after the propeller left the water, that she would swing around with her bow up?

A. The bow was down before the propeller left the water.

Q. I mean up stream.

A. I think if there was a motion on her and her head down, she would run awhile and wheel around of herself, with her stern down stream, that is my impression.

Q. She was running then, about four minutes before you left her?

A. Yes, sir.

Q. And she sunk in about a minute after you left her?

A. It was more than a minute after we left her that she sunk.

Q. You observed the trees on the shore?

A. Yes, sir.

Q. When you left the boat?

A. Yes, sir. When I found that Hester and Blessini were missing, I asked the pilot of the Dumois to search for them, he got into our little boat and left the Dumois, and searched on that bank, where the trees were, on which was the west bank.

Q. The night was so dark at the time you got—at the time that the shock took place from the collision, that everything was in confusion, I suppose you were not able to judge accurately.

A. I was not confused at all, I didn't feel that I was in any danger.

Re-Direct Examination.

By Mr. De Gray:

Q. You dont know anything about the blowing of whistles, do you?

A. No, sir.

Q. That was all done before you were awakened?

A. I have a faint recollection of hearing one whistle, I couldn't tell whether I dreamt it or heard it.

Q. You were asked just now by Mr. Grant, if the Argo had not been running a minute or two before you left her. Do you know whether her engine had been stopped at all, or not?

A. I didn't know that she had been stopped.

Q. If she had been stopped you dont know whether she was started?

A. No sir, I dont know. The engine may have started after I got up on deck.

Q. Of that you have no knowledge?

A. No, sir.

Q. All you know is, that when you got in the yawl—

A. About to leave the Argo.

Q. When you were leaving the Argo?

A. I know the engine was running, that is all I know about the engine.

Re-cross Examination.

By Mr. Grant:

Q. Was the night very cold?

A. Yes sir, it was very cold.

Q. It was extremely cold for this part of the country?

A. It was the coldest night I have ever experienced and I have had a great deal of experience.

Q. In navigating the small boat, did you use the oars at all?

A. We used the oars as paddles and paddled alongside—

Q. How many did you have?

A. We had two oars, one on each side. They tried to shove the oars and I told them not to attempt it, that the boat was so cranky that she would capsize, I was on my knee in the bottom of the boat with my hand on each side of the gunnel to steady the yawl to keep the fellows from capsizing her, because they all appeared to be crazy with excitement. When she would lurch down one side I would throw my weight on the other and being in the bow I acted as a kind of a lever on the entire boat. She didn't have out but, well about 3 or 4 inches of free board above the water.

Q. Had the boys been drinking much that night?

A. No sir.

Q. Did they have any whisky on board?

A. They had one bottle on board and half of that is in the wreck of the Argo. There has been a hundred people who have asked me that same question already.

By Mr De Gray:

Q. You said there was only half a bottle of whiskey that had been drunk?

A. Yes, sir.

Q. Who drank that?

A. Let us see—the Engineer and cook took three drinks, the fireman took one drink, the deckhand took one drink, Mr. Blessini took two drinks and Mr. Hester took one drink. I thought that Mr. Frantz took one drink also, but he assured me since he had not.

Q. Was there any drunkenness on board of that boat?

A. No sir, not a particle of it, sir.

Q. Was, or was not every one on that boat in full possession of all their faculties on that night?

A. Yes, sir.

Q. Now, then, what do you say as to Captain Brown, did Captain Brown drink anything?

A. Not a drop, he was asked to drink and he refused, he said he hadn't drank anything for 30 years. I was asked to drink and I refused, I hadn't drank anything for 2 years.

E. A. Conrad, witness sworn on behalf of libellant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. What is your business?

A. I am a sub-marine diver.

Q. Have you made any examination of the river in the vicinity of the alleged place of collision between the Argo and the Albert Dumois?

A. Yes sir, I have been down there and searched for her.

Q. Well, just tell us what you did?

A. We went down there—the first day we were there we searched with one boat, the B. D. Wood, with a single grapnel over her head. After working one day with her on the west bank of the river, and not having any success, we worked possibly three miles up and down the river, and not having any success we telegraphed for another tug, the Ella Andrews, she came down, and then we used 300 feet of 7-8 chain between the two tugs in a space about 300 feet wide out in the river, still working on that bank. From what information we got we were under the impression that the boat was sunk on that shore because everybody told me the boat was going ahead when she was going down, her engines were running and she was heading for that shore, when she was running that way she would run pretty near across the river. We worked about half way, about the middle of the river, possibly a little further, and made one or two drags towards the east bank, in fact the last drag we made that evening I think was pretty well over to the east bank.

Q. Did you ever find anything?

A. We only hung up on one thing which proved to be a stump.

Q. What was the current there?

A. It was a pretty stiff current, about four mile current.

Q. You were there, how long, on the first occasion?

A. We were there two days.

Q. And you failed to find any wreck?

A. Yes sir.

Q. Did you go down a second time?

A. Yes sir.

Q. How long were you there then?

A. I was only on the ground about two hours and a half or three hours altogether.

Q. What was the purpose of your going down then?

A. The Item had a boat down there and a wrecking crew, and they had reported they had located the Argo and Mr. Rapier asked me to go down—

Q. Mr. Rapier of the Picayune?

A. Yes sir. He asked me if I would go down on what they had located as the Argo, he wanted me to go down and prove whether it was or not, so I went down and after about two hours' grappling we hooked our anchor into what proved to be an old sunken barge.

Q. On which shore was that on?

A. That was on the east bank.

Q. How far from the bank?

A. It was not over 120 feet, 130 feet.

Q. Did you go down?

A. Yes, sir; I went down on the wreck and found it was an old coal barge.

Q. How much water was there?

A. About—between 60 and 70 feet, nearer 70 than 60, I couldn't judge very well, there is a very stiff current along there.

Q. You went down in sub-marine armor?

A. Yes, sir.

Q. Could you tell what the current was after you got down in the water?

A. No, sir; I could judge better from the deck, but you couldn't tell much about it when you get down.

Q. You have had a great deal of experience diving in the Mississippi river?

A. Yes, sir; I have been diving in the Mississippi river about 8 or 10 years, 10 years.

Q. Your experience is such then, is it not, that you can pretty well measure the force of the current?

A. By my eye, I can tell. I can judge also by the speed of the boat, the time we make going up and coming down the river and I can tell by seeing the drift going along.

Q. Your judgment is, that the current at that time, last January, was four miles an hour?

A. Yes, sir.

Q. What sort of a bank is the east bank in this vicinity, which was it, a steep bank or was there a batture in front of it?

A. You mean the bank exposed or under the water?

Q. Under the water?

A. It was not a bluff bank by any means, it gradually tapers off, it may be pretty bluff for about 18 or 20 feet, but then it gradually goes off.

Q. How much water would there be where it is 16 or 20 feet from the shore?

A. I don't think there is over 100 feet of water in that bend anywhere, I sounded while we were there.

Q. Is there water enough for a vessel drawing 20 feet, right up to the edge, right up to the shore?

A. I don't know, a vessel might possible run within a 100 or 120 feet of the bank, skim along there, but it would be pretty hard steering, I wouldn't like to take one in that close.

Q. How near would it be safe for a vessel to go in there, a vessel like the Albert Dumois?

A. I wouldn't run within—very close—100 yards of it.

TESTIMONY OF A. C. LINDAUER, RECALLED, FOR LIBELLANT.

Taken before Frank H. Mortimer, United States Commissioner, on the 14th day of December, 1897, and Filed December 16th, 1897.

Oscar M. Springer :
vs. : No. 13,319.
S/S. Albert Dumois. :

Appearances:

R. DeGray, Proctor for Libellant.
Rouse & Grant, Proctors for Claimant.

A. C. Lindaur, witness, recalled on behalf of libellant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. As you have already stated, you were one of those on board the Argo at the time of the collision with the Dumois?

A. Yes, sir.

Q. You knew Mr. Hester and Mr. Blesini?

A. I knew them both.

Q. Do you know whether or not any offer was made by them and accepted by Captain Brown for them to serve as part of the crew of the Argo on that trip?

A. I didn't hear them offer their services to Captain Brown.

Q. What did you know about that matter?

A. The understanding was, between the three of us, that we were to render all the assistance in our power, and I offered my services to Captain Brown himself.

Q. The understanding was between you, Hester and Blesini, that would go as part of the crew, going down the river?

A. Yes, sir.

Q. Why were you to go as part of the crew, were they short-handed?

A. I don't know that they were short-handed exactly, I don't suppose they would have been, there were on board the Captain, engineer, deckhand, a fireman and the cook or steward, besides we three, Hester, Blesini and myself and Mr. Frantz.

Q. Mr. Frantz was a passenger?

A. Mr. Frantz was a passenger or guest you might say.

Q. Of you three people?

A. Yes, sir.

Q. And you three people tendered your services as part of the crew?

A. Yes, sir.

Q. What experience had you had, if any, on board of vessels?

A. I had been sailing a vessel. I am able to sail, to handle any kind of a sailing vessel, I know a little about machinery and have piloted my own schooner time and again in the Lake and Mississippi Sound waters.

Q. Are you competent to act as a deckhand?

A. Oh, yes sir.

Q. What of Hester and Blesini?

A. Blesini was a yachtsman, an amateur sailor, and Hester had been around boats, that, of course, is only from what he told me, around in the watering places, he knew all about boats.

Q. You have talked with them about boats?

A. Yes, sir; we spoke that night about it.

Q. Were these men competent to perform the position of deck-hand on board of the Argo?

A. I think they were more competent than the professional that was aboard.

Q. Than any of them?

A. Yes, sir.

By Mr. De Gray:

Q. I desired to direct your attention to another matter. Do you remember any conversation that occurred in the cabin of the Dumois after the crew of the Argo had arrived, in the cabin between Captain Brown and the Captain of the Dumois?

Counsel for Claimant states that inasmuch as the case for

libellant has closed, and the rebutting evidence of the claimants has been put in, in the case fixed for trial, he objects to the introduction of further cumulative evidence on the part of libellant, such as is now sought to be introduced.

Counsel for Libellant states, in reply: On the contrary the record shows nowhere, any closing of the testimony on the part of libellant and that of the claimant. The master of the ship was only produced on Saturday last, December 11th, 1897, and at that time he was duly notified of this testimony because the foundation for it was laid at that time by asking him whether or not the matters in which I am going, or true or not, and he denied them.

To which Counsel for Claimant replies that he was notified by counsel for libellant that Lindaur would be re-called to establish the status of Blesini and Hester as members of the crew of the Argo, and I had no objection so far as this was concerned.

A. At eight o'clock in the morning after the collision, that is, the morning of the collision taking it as having occu red at half past 12 Thursday—I don't know what time it was myself—there was a conversation between Captain Brown and the Captain of the Dumois, I don't know his name, he came out of, I suppose, his state-room, out of a passage way, and was standing at the table and Captain Brown and he got into an argument relative to the collision. Captain Brown said, didn't I blow the first whistle, shaking his finger at him, the Captain of the Dumois said yes, and didn't I answer you with two, then Captain Brown said "Didn't I blow one after;" then the Captain of the Dumois said, then didn't I give you two more then, and with that Captain Brown turned round and walked out of the cabin door. That is the substance of what they said, the exact words, of course, I don't pretend to say and I don't remember exactly, but I think they were pretty near what they said.

Cross-Examination.

By Mr. Grant:

Q. Then you distinctly say that Captain Brown admitted to Captain Rusted that his second signal was answered by the Dumois with two whistles?

A. Captain Brown blew one whistle and the captain of the Dumois answered him by two and Captain Brown said he blew another whistle and the Captain of the Dumois said "and I answered you with two again," or words to that effect.

Q. And Captain Brown conceded that to be a true statement, the statement made by the Master of the Dumois to be true?

Q. The conversation itself would imply that, from the fact

that h econceded that the Dumois answered with two, when he said "then didn't I give you another one" that would show that he thought the Dumois blew two whistles.

Q. In response to the second signal of the Argo?

A. In response to the first signal of the Argo.

Q. Captain Brown didn't deny the response to his second signal?

A. No, sir; he didn't deny that.

Chart of the River, Marked "——"

Picture of the Argo, marked "Libellant 2." Offered by Libellant and filed December 16th, 1897, are sent up in the originals as per agreement and consent, of date February 8, 1898, on file, copied at page 433 of this Transcript.

DESIGNATION OF LINE BY SECRETARY OF THE TREASURY, DIVIDING HIGH SEA FROM RIVERS, HARBORS AND INLAND WATERS.

Dated July 13, 1895, Made Pursuant to Sec. 2, Act of February 19, 1895.

Filed December 16th, 1897.

Pursuant to Section 2 of the Act Approved February 19, 1895, the following lines dividing the high seas from rivers, harbors, and inland waters are hereby designated and defined:

(Bearings are Magnetic.)

New York Harbor—From Navesink (southerly) Lighthouse N. E. 5-8 E., easterly, to Scotland Light-Vessel, thence N. N.-E. 1-2 E. through Gedney Channel Whistling Buoy (proposed (position) to Rockaway Point Life-Saving Station.

Baltimore Harbor and Chesapeake Bay—From Cape Henry Lighthouse N. E. by E. 3-4 E., easterly, to Outer Entrance Whistling Buoy, thence N. by E. 3-8 E. to Cape Charles Lighthouse.

Galveston Harbor—From Galveston Bar Whistling Buoy, N. by W. 3-4 W. through the beacon marking the outer extremity of the N. Jetty and S. W. by W. 1-2 W., westerly, through North Breaker Beacon.

Boston Harbor—From Point Allerton N. N.-E. 1-4 E. easterly, through Point Allerton Beacon to Northeast Grave Whistling Buoy, thence N. N.-E. 1-4 E. to Outer Breaker (Great Pig Rocks) Bell Buoy, thence N. E. by E. 3-8 E. to Halfway Rock Beacon, thence N. E. by E. 1-4 E. to Eastern Point Lighthouse.

San Francisco Harbor—From Point Bonita Lighthouse S. E. 7-8 S. Point Lobos.

Portland, Me., Harbor—From Cape Elizabeth (E.) Light E. N.-E. to Halfway Rock Light, thence E. Southerly, to Seguin Light.

Philadelphia Harbor and Delaware Bay—From Cape Henlopen Light, N. E. by E., to South Shoal Whistling Buoy, thence N. N.-E. 1-4 to Cape May Light.

Charleston Harbor—From Charleston Light-Vessel N. W. 1-2 W. (toward Sullivan's Island Range Rear Light) to the North Jetty, and from Charleston Light Vessel S.W. 1-8 W. to Charleston Whistling Buoy, thence S. W. 7-8 W. to Charleston Main Channel Entrance Bell Buoy, thence W. to Folly Island.

Savannah Harbor and Calibogue Sound—From Tybee Whistling Buoy N. N.-W. 15-16 W. through North Slue Channel Outer Buoy to Braddock Point, Hilton Head Island, and from Tybee Whistling Buoy W. to Tybee Island.

St. Simon Sound (Brunswick Harbor) and St. Andrew Sound —From Hotel on beach of St. Simon Island 15-16 mile N. E. by E. 1-4 E. from St. Simon Light House, S. E. 7-8 to St. Simon Sea Buoy, thence S. 1-4 E. to St. Andrew's Sound Sea Buoy, thence W. to the shore of Little Cumberland Island.

Pensacola Harbor—From Pensacola Entrance Whistling Buoy N. 7-8 W., a tangent to the E. side of Port Pickens, to the shore of Santa Rosa Island, and from the Whistling Buoy N. W. 3-16 W. to Fort McRee Range Front Light.

Mobile Harbor and Bay—From Mobile Bay Outer or Deep Sea Whistling Buoy (or its watch buoy in summer) N. E. by N.

to the shore of Mobile Point, and from The Whistling Buoy N. W. by W. to the shore of Dauphin Island.

New Orleans Harbor and the Delta of the Mississippi—From South Pass East Jetty Light N. by E. 1-2 E. to Pass a Loutre Light, thence N. to Errol Island and from South Pass East Jetty Light W. 7-8 S. to Southwest Pass Light, thence N. to shore.

San Diego Harbor—From Point Loma, Light S. 718 E. to San Diego Bay Outside Bar Whistling Buoy, thence N. N.-E. 7-8 E. to tower of Coronado Hotel.

Kittery Harbor, Me., and Portsmouth Harbor, N. H.—From Kitt's Rocks Bell Buoy N. N.-E. 3-4 E. through Horn Island to the main shore, and from Kitt's Rocks Bell Buoy N. W. by W. 5-8 W. through Frost's Point Ledge Buoy to Frost's Point, N. H.

Newburyport, Ipswich and Annisquam Harbors, Mass.—From Salisbury Beach Range Rear Light a line S. E. 1-4 S. to Newburyport Bar Whistling Buoy, thence a line S. by E. 3-8 E. (toward Annisquam Light) to a point of intersection with a line drawn from Ipswich Light E. 13-16 S. to Halibut Point, thence from the point of intersection along the latter line E. 13-16 S. to Halibut Point.

Columbia River Entrance—From Cape Disappointment Light S. E. 7-8 E. to Point Adams Light.

COPY CERTIFICATE OF INSPECTION BY BAKER & YOUNGBLOOD, INSPECTORS.

Certified to by Crawford, Dy. Collector, May 6, 1897, and Filed December 16th, 1897.

(Form 2113 1-2.)

By Authority of the United States of America.

One copy of this Certificate when used on vessels of 25 gross tons and upward must be exposed under glass. On Steamers of less tonnage the Certificate must be kept on board to be shown on demand.

CERTIFICATE OF INSPECTION

For Passenger Steamers of One Hundred Tons Burden and Under.

(Sec. 4426 R. S.)

Passenger Steamer Argo.

State of Louisiana, :
District of New Orleans. : ss.

Application having been made in writing to the undersigned, Inspectors for this District, to inspect the Steamer Argo, of Detroit, in the State of Michigan, whereof O. M. Springer is owner and Jas. Brown is master, and having performed that duty on the 23rd day of September, 1896, do certify that the said vessel was built at Bristol, in the State of Rhode Island, in the year 1878; that the hull is constructed of iron, and, as shown by official records, is of 48.20 gross and 24.10 net tons burden; that the said vessel has one saloon and 10 berths, and is allowed to carry 75 passengers, viz: .... first cabin, ... second cabin, and 75 deck or steerage passengers; also, is required to carry a full complement of officers and crew, consisting of .... master, 1 pilot, ... mates, 1 engineer, 5 crew. That said vessel is provided with 1 comp'd condensing engine of 9 & 16 inches diameter of cylinder and 1 1-2 feet stroke of piston, and 1 boiler, 7 1-2 feet in length and 84 inches in diameter, made of steel in the year 1888, and is allowed a steam pressure of 60 pounds to the square inch, and no more. The said vessel is permitted to navigate, for one year, the waters of the lakes, bays, sounds and rivers, and touching at intermediate points, a distance of about ..... miles and return.

The following particulars of inspection are enumerated, viz:

Lifeboats, No. 2.
Life-rafts, No. 1.
Metal lifeboats, No. 1.
Drags, No. .....
Compasses, No. L.
Anchors and cables, No. 2.
Cork life preservers, No. 82.
Hose, size 1 1-2.
Hose, feet, 50.
Hand fire pumps, No. 1.
Stoves securely fastened to deck? Has.
Has wire tiller ropes, ...

Has iron rods or chains? Yes.
Has wire bell pulls? Yes.
Has signal tubes from pilot house to engine room? Yes.
Has oars and life lines? Yes.
Wood lifeboats, No. 1.
Boilers, tensile strength of 60,000.
Boilers, ductility of 5393%.
Record of local inspector's office at Detroit.
Flues, No. 2.
Flues, Diameter 28"
Flues, Thickness 35"
Fire buckets, No. 6.
Water barrels, No. 1.
Water tanks, No. ....
Axes, No. 2.
Has permanent stairways from main to upper deck.
Safety valves, No. 1.
Safety valves, dimensions 3 in.
Safety valves, weights adjusted at 60.
Gauge cocks, No. 3.
Low water gauges, No. 1.
Locked up safety valves, No. ....
Fusible plugs, No. 1.
Boilers, No. 1.
Boilers, when built? 1888.
Boilers, by whom built? McGregor & Son.
Steam pumps, double acting.
Pipes to carry steam into hold.
Watchman, No. 1.
Has three water-tight bulkheads.
Tubes, No. 54.
Tubes, diameter 2 in.
Tubes, length 5 2-3 feet.
Longitudinal seams, T riveted holes. P.
Has two copies steamboat law on board? Yes.
Has name in letters six inches long on side of pilot house? Yes.
Has signal lights? Yes.
Location of steam whistle? Stack.
Has additional steering apparatus consisting of Tiller.
Feed pumps for boiler, 3.

Port of New Orleans, :
State of Louisiana. : ss.

(Signed) JAS. McC. BAKER,
Inspector of Hulls.
W. YOUNGBLOOD,
Inspector of Boilers.

Sworn to before me this 24th day of September, 1896.

(Signed) FRANK J. OTTO,
[Seal] U. S. Commissioner.

Custom House, New Orleans, La., May 6th, 1897.
I hereby certify that the above certificate is a true copy of the original on file at this office.
(Signed) J. D. CRAWFORD,
Dy. Collector of Customs.
This certificate expires Sept. 23rd, 1897.

The above form of Inspection Certificate was adopted by the Board of Supervising Inspectors at the annual meeting held in January, 1885. Amended February, 1888, January, 1890, February, 1892, February, 1894, February, 1895.

*Inspectors may in all cases accept the record as given in this certificate when the steamer is inspected in a district other than that where the record is kept, noting in Form 2112 the date of certificate and place of inspection.
Amended Form approved February 20, 1895.
(Signed) C. S HAMLIN,
Acting Secretary of the Treasury.
(Signed) JAS. A. DUMONT,
Supervising Inspector General, President of the Board.
(Indorsement in red ink on the face): The boiler of this steamer having been thoroughly examined, was this day tested to a hydrostatic pressure of 186 pounds and was found sufficient in strength to be allowed a safe working pressure of 124 pounds. The working pressure is hereby increased to 124 pounds and safety valve set at 124 pounds.
New Orleans, La., Jan. 4th, 1897.
(Signed) W. YOUNGBLOOD,
(Signed) JAS. McC. BAKER,
Local Inspectors.
20c. Cashier's Office. Paid May 6, 1897. Custom House, New Orleans, La.

LICENSE OF ARGO FOR COASTING TRADE.

Filed Dec. 16th, 1897.

Temporary License No. 72. Official Number 140,328.

The United States of America.

Sec. 4321, Rev. Stats. Cat. No. 541.

License for Enrolled Vessel.

License for Carrying on the *Coasting Trade:

In pursuance of Title L, "Registration of Vessels in Domestic Commerce," of the Revised Statutes of the United States†, James Brown, master for Oscar M. Springer, of Detroit, Michigan, sole owner, having given bond that the steam propeller called the "Argo," whereof the said James Brown is master, burden gross 48-20-100 tons, net 24-10-100 tons, as appears by her enrollment, No. 19, dated at Galveston thirty-first March, one thousand eight hundred and ninety-six, shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also§ sworn that this license shall not be used for any other vessel, or for any other employment than is herein specified, license is hereby granted for the said steam propeller called the Argo, of Detroit, to be employed in carrying on the coasting trade for one year from the date hereof, and no longer.

This license does not grant the right to fish for mackerel, other than for what is known as Spanish mackerel, between the first day of March and the first day of June, inclusive, of this year.

Given under my hand and seal at†† the Port of Galveston, in the District of Galveston, this 31st day of March, in the year one thousand eight hundred and ninety-six.

(Signed) QUITMAN FINLAY, [Seal]
Spl. Dy. Collector of Customs.

No.

....., Naval Officer.

*Insert "Coasting Trade," "Whale fishery," "Mackerel fishery" or "Cod fishery," as the case may be.

†Insert the name of the husband or managing owner, with his occupation and place of abode, and the name of the master, with the place of his abode.

††Insert name of district, day, month and year, in words at length.

§"Sworn" or "affirmed," as the case may be.

INDORSEMENTS OF CHANGE OF MASTER.

District of Galveston, Port of Galveston.

1 April, 1896.

A. McFarland having taken the oath required by law, is at present master of the within named vessel, in lieu of James Brown, late Master.

(Signed) P. S. WREN,
[Seal] Dpy. Col. of Customs.

District of Galveston, Port of Galveston.

2 June, 1896.

M. Bedes having taken the oath required by law, is at present master of the within named vessel, in lieu of A. McFarland, late Master.

(Signed) CHAS. G. CLIFFORD,
[Seal] Dpy. Col. of Customs.

District of Corpus Christi, Port of Rockport.

June 19, 1896.

G. M. Roberts having taken the oath required by law, is at present master of the within named vessel, in lieu of M. Bedes, late master.

(Signed) BRANCH ISBELL,
Dpy. Col. of Customs.

District of Corpus Christi, Port of Rockport.

Sept. 1st, 1896.

James Brown having taken the oath required by law, is at present master of the within named vessel, in lieu of G. M. Roberts, late master.

(Signed) BRANCH ISBELL,
Dpy. Col. of Customs.

Piece of Painted Woodwork, marked "Argo 1."
Piece of Rope, marked "Argo 2," offered by Libelant and filed December 16th, 1897.
(Sent up in original as per agreement on file, see page 433.)

DEPOSITION OF OSCAR M. SPRINGER.

Filed December 16th, 1897.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

Deposition of Oscar M. Springer in his own behalf, taken in open Court on the 16th day of December, 1897.

Present:

R. De Gray, Proctor for Libelant.

Denegre, Blair & Denegre, Proctors for Mrs. Hester.

Rouse & Grant, Proctors for Claimant.

O. M. Springer, witness recalled on behalf of Libelant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. You were the owner of the Steamer Argo, were you not?

A. Yes, sir.

Q. Sole owner?

A. Yes, sir; sole owner.

Q. You were familiar with her?

A. Yes, sir.

Q. And had been aboard of her a great deal?

A. Yes, sir.

Q. You lived aboard of her?

A. Yes, sir, for weeks at a time.

Q. I now show you a piece of wood painted white, consisting of three strips fastened with two iron dowels and a portion of a brass hinge on one end and none on the opposite by evidence of the place where something has been fastened, and on the opposite side two hooks or eyes for hooks—marked Argo—and ask you whether you recognize that piece of wood?

(Counsel hands witness piece of wood referred to and witness examines same.)

A. I do.

Q. What is it?

A. It is one of the shutters on the side of the bulwarks.

Q. I show you a picture of the Argo which has been heretofore offered in evidence and ask you whether you can point out to the court the particular place where that shutter is taken from?

(Counsel hands witness picture of Argo.)

A. I think I can. I think it is from that portion of the hull of the Argo about—at the after end of the cabin.

Q. Were there more than one?

A. Oh, yes, sir; there were four—there were eight shutters like that on the Argo in the bulwarks, where the ropes go through to make her fast.

Q. That is, four on each side?

A. Yes, sir; they are indicated there on that picture. That

of course is just a small one; I don't think there is any shutter there, I think there are two there and two there.

Q. This, as is shown on the picture, is the shutter turned up?

A. Yes, sir.

Q. That would be turned up, or not, by reason of these hinges which are fastened, and this goes in this way, and when it is turned up?

A. Yes, sir.

Q. And what are these eyes that are on the opposite side of the hinges?

A. They are for hooks inside of the bulwarks which hook and close the shutter so the water will not wash in on the decks.

Q. That is when you went to sea?

A. Yes, sir.

Q. Mr. Springer, when did you first learn of the loss of the Argo?

A. I believe it was the next day—I am not sure—it was the next day after she was sunk.

Q. Where were you at the time?

A. I was stopping at the Grunewald Hotel. I went into the Grunewald Hotel and Captain Brown was there, and informed me the Argo was no more.

Q. That was the first information you had of the loss of the Argo?

A. That was the first and very startling information I had of the loss of the Argo.

Q. And wasn't it the very first information you had concerning the loss—

A. It was positively the first I had.

Q. In any respect?

A. Yes, sir; I could hardly credit it at the time.

Q. Was the boat—you say it was startling—was the loss itself startling, the fact that she was lost?

A. Yes, sir.

Q. And more particularly why, on you?

A. Because I had the boat sold, part of her, at least.

Q. What part?

A. One-half.

Q. For how much?

A. $7,500.

Q. When was the property to be delivered?

A. The money was to be paid that day, at one o'clock.

Q. That very day you were apprised of her loss?

A. Yes, sir.

Cross-Examination.

By Mr. Grant:

Q. When did you first see this piece—so-called piece of the Argo?

A. When I came here yesterday; that is, since it came from the wreck.

Q. Then you didn't take this piece of wood marked Argo from the Argo yourself?

A. No, sir; I did not.

Q. You never saw it until you saw it here?

A. No; I only identify it from the appearance of it and the brass hinges on it being made the same and the size and condition, everything of that kind leads me to the conclusion absolutely that it is from the Argo.

Q. When did you purchase the Argo?

By Mr. De Gray: Your Honor, I do make an objection to this. Suppose somebody—

A. I think I answered this question when you examined me before, Mr. Grant, as your witness.

Mr. De Gray: The question evidently in Mr. Grant's mind is as to the value of the Argo. Suppose he bought the Argo for ten cents—

Q. Answer the question?

A. According to my recollection, Mr. Grant, now, it was in the fall of 1895. I answered the question and it is all written out in the testimony—the same question, when my mind was refreshed on it, and I can't—

By the Court:

You are not prepared to state now positively?

A. I think it was in the fall of 1895.

By Mr. Grant:

Q. I am perfectly satisfied with your statement—what did you pay for her?

A. Well, I paid $2400 or $2500 as she was at that time; she had been sunk and under the water all winter, and had been raised, and I bought her in that condition. There was a mortgage on her for $2500.

Q. The purchase price went to discharge that mortgage?

A. I can't say positively about that; there was a peculiar deal between me and some other parties in relation to the boat, and I bought the boat and they acquired the mortgage; the mortgage I didn't pay.

Q. The mortgage was lifted, however?

A. Yes, sir; I didn't have to pay it, but I had to pay a great many other things.

By Mr. Denegre:

Q. You, as the owner of the Argo, furnished the crew and the captain did you not?

A. Captain Brown was in charge of the Argo, taking care of the ship, when the New Orleans Picayune Company came to me to charter the boat. I gave Captain Brown instructions not to go out with the boat unless he had a full crew. They chartered the boat and agreed to pay me $100 to make that trip to the Jetties.

The Court (to Mr. Denegre):

Q. Whom do you represent?

A. Mrs. Hester.

Q. You are suing the Argo?

A. We come in here in answer to the monition.

Q. (To witness): They paid you $100?

A. They have not paid the $100 nor any part of it.

Q. But the bargain was to be $100?

A. Yes, sir.

Q. And you were to supply the vessel and the crew?

A. I was to supply them with the vessel and the crew. Captain Brown was to obtain the crew, and my recollection now is that they were to provision the boat.

Q. They chartered the boat to go down to the Jetties after the steamship Whitney, and return?

A. Yes, sir.

Witness: There is one thing that has been hinted at in the testimony that I desire to make a statement about. It has been asserted that the Argo had her stern cut off, and I desire to say to the Court that that picture was taken of the Argo in the City of New Orleans after she was brought here, and she is in exactly the same condition, her lines and everything, as the day I bought her. There has never been anything cut off from her.

Q. You brought her from Chicago to New Orleans?

A. Yes, sir; and had her taken to Galveston from here and back here again.

Q. And nothing from the time you bought her and brought her to New Orleans has ever been taken from her stern?

A. No, sir.

Q. I now show you a piece of rope that is marked Argo No. 2—can you identify that as being any part of the Argo?

A. Not positively, but I think it was a piece of the rope that went up to the davits that was used in lowering and raising the lifeboat, putting it into the water.

Counsel for Libelant offers again in evidence that piece of wood and this rope in connection with the testimony of this witness.

ASSIGNMENT OF O. M. SPRINGER OF ALL INTEREST IN WRECK OF ARGO AND CHARTER MONEY.

Copied at Page 65 of this Transcript.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

Testimony taken in this cause on behalf of Libelant, on the 19th day of March, 1897, before Frank H. Mortimer, U. S. Commissioner.

Appearances:
R. De Gray, Proctor for Libelant.
Rouse & Grant, Proctors for Claimant.

Noble R. Bagley, witness worn on behalf of Libelant, testified as follows:

Direct Examination.

By Mr. De Gray:

Q. Where do you reside?
A. Kansas City, Missouri.
Q. Have you been in New Orleans during the past winter?
A. Yes, sir.
Q. For how long a time?
A. Almost continuously since the 7th of November.
Q. Do you know Mr. Springer, here?
A. Yes, sir.
Q. How long have yon known him?
A. I believe since November or December; I guess since December, 1896.
Q. Did you have any negotiations with him with refernce to a purchase of the Argo or interest in the Argo?
A. Yes, sir.
Q. What was it and when was it—please tell us?
A. I had a deal on with Mr. Springer whereby I was to purchase half interest in the Argo for $7500.
Q. When was this?
A. I don't remember the exact date, but the deal began about a week before the accident happened—about ten days, I guess, before the accident of the Argo.
Q. Did you make any effort before entering into this matter, to ascertain the value of the Argo?
A. I did.
Q. What was it?

A. I made a personal examination myself of the boat, and also had Mr. Connell, I believe, whom I understood to be an expert in that line, to place a valuation on her.

Q. Did you see Mr. Connell personally or did you negotiate with him through an agent or other parties?

A. I saw him.

Q. What did you ascertain to be her value, from your own judgment and from such information as you could get from experts?

A. I placed in my own mind the valuation at $25,000; I was satisfied that was as low as I could—

Q. In arriving at that conclusion, were you governed by the advice which you received from other parties?

A. Partly, and partly from my own information and investigation. I relied mainly on what Mr. Connell said, because I understood he was an expert in that line and very reliable.

Q. What was his representations made to you as to her valuation?

A. He stated that the lowest valuation he could possibly put on the boat was $20,000, or said the boat would be cheap at $20,000, I believe.

Q. If she had not been lost, would you have become the owner of one-half of her?

A. If I remember, I was confined to my room about that time, and Mr. Springer—I had sent to him to come and see me, and he came over with Mr. Johnson on the morning that the news came the boat had sunk; before either of us knew anything about it I sent for him to come over and arrange the transfer. He came in company with Mr. Jake Johnson, and we talked the matter over, and everything was agreed upon practically, and he was to come back at one o'clock. He said he would get a blank deed; he would make the transfer out regularly and come back at one o'clock.

Q. Then a half interest in the boat was sold and the papers were to be executed on that day at one o'clock?

A. Yes, sir.

Q. And the price that you were to give for the half interest—

A. Was $7500.

Q. After you acquired that half interest, what would you consider that half interest worth, as an investor?

A. I consider that I would realize, during the present year, the price I paid for the boat, for the half interest, and probably $5,000 in addition.

Q. How did you expect to use her?

A. I expected to put her in service on the lake, crossing from West End.

Q. To where?

A. To the different little towns across there, on the other side; run it as an excursion boat and freight boat also.

Q. Had you made an investigation into the business?

A. Yes, sir; I had gone into it thoroughly.

Q. Was Mr. Springer to remain the owner of the other half?

A. Yes, sir; he was to have the other half and I was to have control of the boat.

Q. And his interest was worth to him as much as yours was to you?

A. Yes, sir; I considered it that way.

Cross-Examination.

By Mr. Grant:

Q. Your idea of the value of the Argo was based upon your estimate as to what you could have made with her?

A. No, I wouldn't say it was my actual idea of the value; I considerd the boat, from investigations, to be worth $25,000 at least; I decided I could earn a fair rate of interest on a much higher valuation?

Q. You say you made this agreement with Jake Johnson?

A. No, sir; with Mr. Springer.

Q. What agreement did you make with Jake Johnson?

A. I made no agreement with Jake Johnson.

Q. What part did he have in the transaction?

A. He had no part except that he was an old acquaintance of Mr. Springer's and mine together, and he came over and called on me just simply as a mutual acquaintance, dropping in together; that was all the part he had in it.

Q. What is the basis of your calculation as to this large profit you could make in running the boat for one year?

A. I base it on the travel across the lake, especially in the summer season; from my own visits to West End and knowledge of New Orleans for a number of years, and by asking several of my friends who have resided here almost all of their lives what their observation has been and what I could reasonably expect.

Q. How many passengers did you expect to carry a day?

A. I expected to clear $50 a day at the least calculation.

Q. I haven't asked you that question, Mr. Bagley.

A. Excuse me, then.

Counsel asks Stenographer to read his question, which is done.

A. I expected to carrw 100.

Q. From what point to what point?

A. I would calculate to run from West End to any point across the lake, and I had intended to establish a landing place on the other side wherever it appeared the most feasible, and

where I could make some real estate speculation out of it.

Q. How much did you expect to charge passengers for a trip?

A. I thought the round trip would be about 75 cents to $1.00; I understood the round trip rate at present was $1.00 in the excursion season, and I thought I could charge fully that much for the service I expected to give.

Q. You expected to carry 100 passengers a day for every day of the year?

A. No, sir.

Q. What portion of the year?

A. I expected that the time that I calculated to run steady would be about five months in the year, but I expected at times, especially Sundays and holidays, it would be greatly increased, probably a great deal more than I could carry, and I estimated I could make the round trip every hour and a half.

Q. You expected to carry 100 people every time?

A. I don't know that there would be 100 people every trip; I expected it would come near that much, but on Sundays and holidays I expected the capacity to be crowded even more than I could carry.

Q. You expected to make the round trip from either the New Canal or the Old Canal every hour and ahalf, did you, across the lake and back?

A. Well, I expected to cross the lake and back, taking as a basis it would be on an average 12 miles across.

Q. What point is 12 miles across from New Orleans?

A. I don't know exactly what width the lake is; I always understood it was—the general average across the lake was ten or twelve miles.

Q. Do you know how far it is from the New Canal or Old Canal or Milneburg to Mandeville?

A. I don't know how you would designate the New Canal or the Old Canal.

Q. What did you calculate your expenses at, working your vessel, per day?

A. I calculated you could run the vessel for $15, probably less.

Q. Do you know how many tons of coal you would consume?

A. It would not consume over one ton a day.

Q. One ton a day?

A. Yes, sir.

Q. How many men would you have employed?

A. I had not decided on that definitely, but about four.

Q. Four men?

A. Yes, sir.
Q. Would you have one engineer?
A. Yes, sir.
Q. One man at the wheel?
A. Yes, sir; and one helper.
Q. What would you do with the other two men?
A. I would have the captain to act as purser—handle the cash. I had not definitely decided just how I would arrange it, but that is about what I expected to run it with.
Q. You wouldn't have any pilot, only have one engineer; you would have one captain, who would collect the fares and act as pilot?
A. The captain I intended to have was a licensed pilot.
Q. Do you know the New Camelia?
A. No, sir; I do not.

Captain A. Thomas, witness sworn on behalf of Libelant, testified as follows:

Direct Examination.

By Mr. De Gray:
Q. Where do you live?
A. No. 423 First street.
Q. What is your business?
A. I am a captain and pilot of vessels.
Q. Have you ever built any vessels?
A. Yes, sir.
Q. What kind of vessels?
A. Propeller boats.
Q. Have you ever owned any?
A. I have owned two or three of them.
Q. Have you ever been connected with the drv dock business?
A. Yes, sir; I was a stepson of Mr. Hewes; he was in the dry dock business for 30 years.
Q. That is Mr. Hewes from Algiers, there?
A. Yes, sir; my father was a dry dock man before him.
Q. Do you know the Argo?
A. Yes, sir; I was on board of her and examined her.
Q. Did you examine her carefully?
A. Yes, sir; very carefully.
Q. What was—what character of boat was she?
A. She was elegantly built over, shaft and propeller.
Q. About how long was she, do you remember?
A. I judge should she was about 60 or 65 feet long; I just judge from looking at her; I don't know the measurements; I never looked at the papers.

Q. Did you go over her machinery?

A. I went all through her; I went through parts of her hull.

Q. When was this?

A. This was about a week before she sank.

Q. What condition did you find her in?

A. I found her in first class condition; she coudn't have been better.

Q. Did you go through her cabin?

A. Yes, sir.

Q. What condition was that in?

A. It was elegantly fitted up; in fact, it was too nice for the business I wanted her for.

Q. Tell us what object did you have in view when you—

A. I wanted to charter her from Mr. Springer to run in the fish business—fish and passenger business from Southwest Pass to New Orleans.

Q. Could you give us any idea, after the examination that you made, of the vessel, from your knowledge of vessel property, could you give us any estimate of what was the value of the Argo at the time you saw her?

A. I could pretty well get at that; the Argo was constructed of a material hard to get here and if built in New Orleans would be worth thirty or thirty-five thousand dollars.

Q. What was she worth, as you saw her there then?

A. She would have been worth twenty-five or thirty thousand dollars to me.

Q. What would you consider that she would sell for?

A. I would consider she would sell for about that.

Q. Did you make any proposition to Mr. Springer as to the employment of the boat?

A. Yes, sir; I did.

Q. What was it?

A. I offered Mr. Springer $250 a month for the use of his boat and 1-4 interest in the profits a month.

Q. To run her where?

A. Down between Southwest Pass and New Orleans.

Q. Who was to furnish a crew?

A. I was to furnish everything.

Q. What was the first offer that you made for her?

A. The first offer I made was $150 a month and I raised from that offer to $250.

Q. And a quarter interest in the profits?

A. Yes, sir; and the quarter interest in the profits a month.

Q. You to pay all expenses?

A. Yes, sir; I was to pay all expenses to run the boat.

Cross-Examination.

By Mr. Grant:

Q. Did you make any offer to buy her?

A. I had an idea to buy her, but I made no direct offer.

Q. Did Mr. Springer offer to sell her to you?

A. Mr. Springer never fixed any price.

Q. That is not answering the question; I asked you if Mr. Springer offered to sell her to you?

A. No, sir; he never fixed any price.

Q. How old a boat was the Argo?

A. I understood she was an old boat rebuilt, not more than two or three years ago; I don't know when she was built, but the rebuilding of this boat made her almost a better boat than when she was new, in my opinion, as a builder.

Q. Did you see her before she was rebuilt?

A. No, sir; but I could judge from the improvements on her of angle iron frames that she had instead of the wooden frames that were taken out.

Q. How do you know that she had wooden frames when she was originally built?

A. I could tell by the pieces that was left in there that she had wooden frames.

Q. What kind of engines and boilers did she have?

A. She had magnificent engines.

Q. Whose make were they?

A. I never examined the make.

Q. What were their character?

A. They were double engines, two engines, I think; I don't remember; it is pretty hard to recollect the size of her engines; I know that she had a Scotch type boiler, and I think the size of her engines were 10x12, something of that kind; the size could be very easily learned on her papers; I couldn't recollect the size two or three months ago that I examined the boat.

Q. This is the only description of the character and kind of engines you can give?

A. That is all about—I found them a very fine pair of engines, an elegant pair of engines, almost as nice as I ever saw, they were speed engines put in by Herreshofs and they don't put anything in second-class, I know that to be a fact.

Q. Did you ever buy or sell a vessel of that character?

A. No, but I have direct communication with the Herreshofs to build me a vessel and I know they are pretty high priced in their figures.

Q. But you never bought or sold or built a vessel of that character?

A. No sir. Not as large as that. I have owned propellers but not quite as large as that, not that style.

Q. Built here?

A. Yes, sir; most of them.

Q. Did you ever build a vessel of that character here?

A. I have had them built for me here, yes sir, double propeller boats.

Q. What boats?

A. The "Reef" was built for me over in Algiers.

Q. Who built it for you?

A. I owned the Yacht, New York, here; I bought her from Chicago. I owned the Chicago, and a vessel called the Jennie Wood and I have chartered a great many vessels, I have chartered and run a great many little boats.

Q. On what basis are Yacht propellers of that character, second-hand, sold in the market—is there any fixed rule as to their value?

A. No sir, there is no fixed rule that I know of. I sold the Yacht, New York, to parties in Biloxi for $2250.00 and after keeping it for some time they sold it to the Government, the other day for $4550.00.

Re-Direct Examination.

By Mr. DeGray:

Q. What sort of a boat was she, as compared—

A. There was no comparison in the rule, you couldn't compare the two boats, the New York was a small boat—

Q. How big was she?

A. She was 50 feet long and about ten feet beam.

Q. Single engine?

A. She had an open trunk engine, triple expansion trunk engine. Very bad boiler in her when I sold her.

Q. Did she have any cabin on her at all?

A. No sir, there was no cabin, there was just a roof.

Q. Was she anything more than a Steam Yawl boat?

A. She was a steam launch.

Q. And you sold her for $4550.

A. No sir, I sold [her] for $2250.

Q. Well, who sold her for $4550.00.

A. The party whom I sold her to.

Q. And that was recently?

A. That has been a month ago, that is, a month ago that they sold her.

Q. I want to ask you in regard to the construction of boats, it is not possible for two boats to be constructed after the same model and vary materially in their speed?

A. That will happen nine times out of ten. One may be built on the direct same lines, same model as another, and may be worth twenty-five hundred dollars more than others, as far as speed is concerned.

Q. Then, where a vessel is a yacht built for speed and after she is constructed and used in demonstrating her speed, is that an element of valuation in considering the proper valuation of the property?

A. That would be for me the main valuation of the vessel. If she had no speed she would be worthless to me.

Q. The fact that the Argo was a very fast vessel, doesn't that enter into your consideration in estimating her value?

A. It does, yes sir, because if the Argo had not been as fast as she was, she would not have been worth the money that I offered for her as a charter-party, she would be of no value to me as a slow vessel.

Act No. 71 of 1884, and Article 2315 R. C. C.
Offered in behalf of Libelant.

DEPOSITION OF O. M. SPRINGER,

Given March 20th, 1897, Called by Claimant, now Offered by Libelant and Filed December 16, 1897.

Oscar M. Springer, :
vs. : No. 13,319.
S/S. Albert Dumois. :

Testimony taken in the above entitled and numbered cause on behalf of Claimant, on the 20th day of March, 1897, before Frank H. Mortimer, U. S. Commissioner:

Appearnces: Rouse & Grant, Proctors for Claimant; R. DeGray, Proctor for Libelant:

O. M. Springer, witness sworn on behalf of Claimant, testified as follows:

Direct Examination.

By Mr. Grant:

Q. Mr. Springer, when did you purchase the Argo?

A. It was a year ago, last summer.

Q. From whom did you purchase it?

A. I purchased her from the Argonauts.

Q. Who were the Argonauts?

A. I wasn't personally acquainted with the gentlemen, it was a society called the Argonauts.

Q. Where was that society located?

A. In Chicago, Illinois, when it was in existence, it is out of existence at the present time and I understood that they had disbanded at that time, this was all the property they had left.

Q. How many dollars did you pay for the Argo?

A. When I bought the Argo, I bought her through another party that made the arrangements with the parties that then owned her. There was a $2500 mortgage on her and I paid $2500 in cash to this party. I have forgotten his name now, and after that I put the boat in shape, which cost me a great deal of money.

Q. Will you give us the name of the party through whom you purchased her?

A. I couldn't say now, I have forgotten it, but I can give it to you. I made a very thorough investigation of the boat and her condition, and had an expert to examine her and paid the expert for examining her before I bought her, and I considered at that time, that I was getting her for about 1-4 of her actual value, at a very low valuation, speculative valuation.

Q. You paid $2500 cash and assumed the Mortgage?

A. There was a mortgage of $2500 when I bought her.

Q. You paid an additional sum of $2500 in cash?

A. Yes sir, I paid $2500 down in cash, to this party whom I got the boat from, he didn't have the title of the boat but the transaction was made through him and through him I got the title. The Club had kind of disbanded and this man, who was a stock broker, gave me the papers and as I said before she had been under water, sunk in the Slip of the Chicago Dock, she was under water all winter. She had been leaking in the Dock and the watchman on her had left her port holes open and the ice had collected around her and during the night a heavy blow came up and she filled with water and the ice was not of sufficient strength to hold her up and she sank in that Slip. Then I went to work after that and put her in shape.

Q. What did you do to put her in shape?

A. Well, Mr. Grant, I couldn't tell you everything I did without memorandum. I couldn't tell you a tenth of what I did.

Q. Did you put her in Dock?

A. Yes sir.

Q. What dock did you put her in?

A. I couldn't tell the name of the dock, it was in Chicago.

Q. You must have the bills that you paid, the dock bills?

A. Oh, yes sir, I have got them some place. I know they amounted way up into a good big lot of money. I will say this, that shortly before I bought her, her hull had been rebuilt and in place of wooden ribs, iron ribs were put in, her hull was made or two-inch wood clear oak, and the cost of it was $10,000; it was just as good as it was the day it was put on her, when she was lost. The last time I saw her hull and examined her bottom was in August last, on the Ways, she was on the Ways at the time. She had been in salt water—

Q. We are rather wandering from the subject—

A. Well, you wanted to know the value of the boat.

Q. No, I wasn't asking you the value of the boat. This change was made before you bought her, from oak ribs to iron ribs?

A. She had been completely rebuilt about a year and a half or two years before I bought her, and she was a better boat up to the day she sunk, than she was the day she was first built.

Q. Hadn't she been cut in two and a section added to her?

A. No sir, she was the same thing that she was the day she was turned off the ways in the Herreshofs Yard.

Q. She was by the Herreshofs?

A. Yes sir, she was a Herreshof boat. The boat was in absolute perfect condition.

Cross-Examination.

By Mr. DeGray:

Q. Before you purchased the Argo, did you employ any experts to and make an examination of her?

A. I did, sir.

Q. Who was that expert?

A. He was some Chicago man, I have forgotten the man's name, I have got letters from him, I think that I can produce.

Q. Was there anybody from Detriot that went to examine her?

A. Yes, sir.

Q. Who was that?

A. I had two men examine her. I had a man by the name of Mr. Hubbell examine her.

Q. What was his business?

A. He was a steamboatman, owner of boats and navigator. A man who had a great deal of experience and in whom I had a great deal of confidence.

Q. Was he known as a man of judgment and experience?

A. I knew him as that, yes sir

Q. Your business is what?

A. I am an Attorney by profession.

Q. How long have you been so?

A. Over 15 or 16 years.

Q. Have you had experience in the Admiralty courts of Detroit?

A. Yes sir.

Q. Did that experience bring you in contact with Mr. Hubbell?

A. Yes sir, more or less.

Q. What report did Mr. Bubbell make to you as to the value of the boat at the time he made an examination?

Objection by Counsel for Claimant.

A. At the time Mr. Bubbell made his examination, was last winter about a year ago. I had taken the boat then and put her in condition. He examined her thoroughly and he told me that the boat was well worth $25,000, that I could not begin to duplicate her for any such money.

Q. What report did this man in Chicago make of her value —you say you had an expert to examine her—did he make any report of her value or only report on her condition?

A. His report was this. That he had made a thorough examination of the boat, that he found her hull in absolute perfect condition. That the hull was new and had been recently put into her at a cost of $10,000. He told me that the boat could not be duplicated for less than about $35,000 or $40,000, and by the expenditure of a few hundred dollars, I think he said, by the expenditure of some money on the boat, the boat would be just as good as it ever was.

Q. Has your experience as a lawer in Admiralty Courts, brought you in contact with the sale of vessel property?

A. Yes sir, considerably.

Q. What did you consider the value of the Argo at the time she was lost?

A. I think that she was worth every dollar of $20,000, and $20,000 would be in my opinion a low valuation to place on that boat.

Q. Can you give us an idea of the amount of money that you have expended, ever since you first purchased her?

A. I couldn't tell you without going to my books, but I know it was a great [deal] of money and I would not venture to state how much it is.

Q. Could you approximate it?

A. It runs way up into the thousands.

Q. Can you say how many thousands?

A. I could not, I would not like to say how many, because

I am not sure about that, but I know it runs way up, I had a lot of work done on her at Galveston, I had a lot of work done on her at Rockport, I had a lot of work done her at Chicago. I put brass bearings into her and had her shaft overhauled and her engines lined up and, dear only knows what I did to it, I bought new life boats, new life preservers, new fittings, new furnishings, everything of that sort.

Q. How was her boiler, was her boiler open and exposed to the weather?

A. No sir, it was not, it was lagged thoroughly.

Q. With what?

A. It was covered with asbestos and around the asbestos was thick sheet iron, probably nearly a quarter of an inch thick, I don't know how thick it was, but it was quite thick.

Q. How about the steam pipes?

A. They were covered too, lagged as they call it.

Q. How were the cylinders?

A. Her cylinders were lagged with brass, they had brass all around them, half an inch thick, and on top of it, in bell shape arrangement, she was beautifully fixed up, her engines was a perfect piece of machinery, and worked like the machinery. I have been in her engine room and could take out my watch and when she was running, hold my watch out and hear the watch tick.

Q. What were the fittings?

A. Her fittings were as fine and as nice a quality as anybody could wish to have. They cost about—well, I couldn't say how much it cost to fit her up, two or three thousand dollars, anyhow.

Q. How many berths did she have?

A. She had ten berths, I believe.

Q. How was her cabin trimmed?

A. It was upholstered in very fine velvet.

Q. What was the wood?

A. I don't know, I think it was white pine, I am not certain, the inside was all grooved and decorated with gold and all that sort of thing.

Q. White and guilt?

A. The gilt was not bronze but gilt leaf.

Q. Is there anything else you want to say.

A. I will say this in addition to what has been stated; that the Argo was in perfect condition; that all of her fixings, all of her hardware was brass, her wheel was brass, propeller—it was a speed wheel—all of her bearings were brass and her shaft was covered with a brass sleeve that I put on at my own expense. Running fore and aft under her fender streaks was a steel plate about 18 inches wide and about half-inch thick, to stiffen her,

make her solid, strong and seaworthy, and the railings all around her were brass. I think if I had the brass that was on the boat, I could sell it for $2500, pretty near that. One man told me there must be that much brass on her; there was a large amount of it; enormous amount of it; her engines were fore and aft, compound condensing engines. She had a keel condenser and that was copper, that was broken and it cost me $250 to have the condenser replaced. I recollect that very distinctly.

Q. Well, Mr. Springer, you were here when—at the time of her loss—in the city of New Orleans?

A. Yes, sir; I was in the city of New Orleans negotiating the sale of the Argo.

Q. Had you arrived at any conclusion in her sale?

A. Yes, sir.

Q. What was it?

A. There was a gentleman here in the city by the name of D. E. Bagley that I had negotiations with and I agreed to sell him one-half interest in her; I made him offer to sell him half interest in the Argo.

Q. Was the offer accepted?

A. Yes, sir; he said he would take it.

Q. What prevented his buying?

A. The sinking of the Argo. I had been over to see him that morning and had an arrangement with him to have the deal closed at one o'clock, and when I went into the hotel I saw Captain Brown and he told me the Argo was gone. Mr. Bagley was to pay me $7,500 cash for half interest in her. I was going to put her in commission here on the lake, Lake Pontchartrain.

Q. Why did you want to put her in commission here rather than take her back to Detroit?

A. Well, the cost of taking her back to Detroit would have amounted to a great deal. In order to get her down here we had to take her mast out and take off the stack and she got on the ground half-dozen times or more, and she had to be taken off by tugs and all that sort of thing, and I didn't know what the cost would be to get her back; I thought it might cost me two or three thousand dollars to get her back; I didn't know what it would cost, and I determined to make that disposition of her here rather than take her back. I was hard up for money and didn't feel that I could spare it, the expense of taking her back. For that reason I was willing to make the sacrifice. But the arrangement that I had with Mr. Bagley was, that he was to run her over here on Lake Pontchartrain to Mandeville and look after her, and he figured that the boat would make $40 or $50 a day.

Q. Over and above expenses?

A. Yes, sir; and I believe I would have made that. I also had several opportunities to charter her for an indefinite period.

Q. But this was a sale?

A. Yes, sir; prior to that time a man sent me from Biloxi a proposition to charter her, offered me $6 a day and he would supply the crew and all the provisions and everything else, so that she would net me $6 a day. I didn't want to do that. A man in town here by the name of Thomas, offered me $150 a month for the use of the boat and agreed to give me a quarter interest in his business. He wanted to use her as a fast boat between here and the Jetties, bringing up fish and game. He argued that she would bring up fish and game; being such a fast boat, there was no chance of the cargo spoiling. I didn't want to let him have it.

Re-Direct Examination.

By Mr. Grant:

Q. You say you paid $2500 in cash when you purchased the Argo—was the mortgage for $2500 assumed and paid by you as part of the purchase price?

A. No, sir; I didn't pay the mortgage.

Q. Who paid the mortgage?

A. I couldn't tell you; it was discharged.

Q. You never had been called on to pay it?

A. No, sir; the mortgage was discharged; some arrangement they made.

Q. So the vessel really cost you $2500 in cash when you purchased her?

A. The vessel as she was sunk.

Q. At the time you purchased her, she cost you $2500 in cash as the original purchase price?

A. That was the original purchase price in the condition she was when I bought her. She had just been raised out of the water when I bought her; she was full of mud and a vast amount of money was expended on her to put her in first-class condition. She had been under water for several months. She was put back in first-class condition, and I am credibly informed that she cost $40,000 when she was built at the Herreshoff's Yard.

Q. Do you remember the year she was built?

A. I couldn't tell you about that now, except by looking up the record; she was rebuilt in the winter of 1892 and '93. She had a new boiler put into her and I asked Mr. Connell what he would make a boiler of that kind for and he said he couldn't duplicate the boiler for less than $3200. The boiler carried 124 pounds of steam; it was a Scotch marine boiler; $3200 is what he told me would be worth to build a boiler like that, and the

boiler was just as good as it was when it was new; it had very little use.

Q. During the last fall, did you offer the Argo to any parties in New Orleans?

A. Did I offer it?

Q. For sale, yes; to any parties in New Orleans?

A. I wasn't here last fall.

Q. Did you offer it by letter or otherwise?

A. I wrote a letter to Captain Brown, telling him that I would sell at a particular time for a certain amount, and when I came down here I didn't have any idea of doing—

Q. What was that amount you authorized Captain Brown to sell her for?

A. Well, it was not less than $10,000.

Q. Didn't you offer it to other parties by letter, to sell it for a certain sum?

A. No, sir; I never wrote to anybody any letters that I know of. When I wrote Captain Brown that letter I was very much pressed for money, and what I might have been willing to sell the Argo for at times to any one, I will say, as a lawyer, has no more to do with fixing her value than it would to fix the value of the diamond upon my shirt front if I would offer to sell it to you for $10.

Q. That may be partly so and partly not; it is always a question of fact.

A. I think this inquiry should be, probably, Mr. Grant, that you want the actual value of this boat, not what I, in stringent circumstances, might have been willing to sacrifice her for. I don't think it is a fair inquiry; I have been perfectly fair with you.

Witness states he would like to make this statement right here in reference to the value of the Argo: After I brought her down here to Galveston and put her in commission there was a man down there that was going to look after the business and had agreed to manage the thing—he wrote me and told me that the Argo wouldn't, when the warm season opened, be able to carry all the passengers that he would be getting and that I had to get another boat, so that when one would go out the other would come in. And I went around to see what I could buy another boat for—

By Mr. De Gray:

Q. Where; in Detroit?

A. In Detroit; and I went to Buffalo and other places in New York and I looked at a number of boats and the cheapest that I had a boat priced to me that would come anywhere near doing what the Argo would do was $20,000, and I wouldn't give

the Argo for two such boats. The Argo was a very fast boat, her record, if I recollect it right, on her trial trips, turning her up 225 revolutions a minute, was 22 and a half miles an hour; two or three weeks before she was sunk I took a delegation, a Cuban delegation out; I had a deal on, and was trying the boat, to the Cubans, and I priced her to them at $25,000 and they found no fault with the price. The only fault they found was that she was not quite large enough and would not carry stuff enough. We went down the Mississippi river, and I showed them against the current of the Mississippi river, according to their own statement, 21 miles an hour. That was pretty fast. We were running against the current at the time; that is what Colonel Martinez reported to the Junta in New York. He took the revolutions and timed the speed of the boat between certain points on the river where the distance was well known.

By Mr. De Gray:

Q. Who owned the yacht Argo?

A. When she was sunk?

Q. Yes?

A. I did. I was the sole owner of her. There was no mortgage or liens of any kind upon her that I know of. The title was in my name and her papers are in my name.

Q. At the time that you enumerated the various articles that were on board of her, was anything omitted?

A. There was a cannon on that I understood cost $300.

A. [Q.] What was it made of?

A. It was made of brass mounted on mahogany, breech-loading, central pin fire. Her metallic life boat I bought and put on her, as required to do so by the Inspectors; and that cost me in the neighborhood of $125.

Q. At the time she was in Galveston what was she doing?

A. She was running in the ferry business, taking people out and around the Jetties and to Texas City and Bolivar.

Q. While she was there, did you have any offers for sale?

A. Yes, sir; I had two parties come to me. Captain Brown came and asked me if I would take $12,000 in cash for her and I told him no. I asked him who wanted her and he told me a butcher in town.

Q. Did you have any other offer or application?

A. A gentleman came to me and said he looked at the Argo, looked her all over, and wanted to know what she was worth; I told him she was worth $40,000, and he asked me if I expected to get that for her and I told him no, I didn't expect to sell for that; in fact, I didn't care about selling her at that time. I had made arrangements that would rather preclude a sale, and he then told me that he would give me $20,000 cash for it. At

the time the man gave me his name; in fact, he gave me his card. He was from up in the interior of the State of Texas; I think it was from up around Fort Worth or some place like that. I know I wondered at the time what he would want with such a boat, but he seemed very anxious to buy it and told me he wanted her particularly on account of her speed. The Argo was 100 feet long and 15½ beam and 48 tons burthen. She was a vessel that you could go any place with. She was a very stanch and seaworthy craft. Her engines were Herreshoffs engines, built by the Herreshoffs people, and I think they were 14 x 16 in diameter cylinders, and 18-inch stroke piston. They were speed engines.

Q. Did you make any examination of the Albert Dumois after the collision—did you see her and go over her?

A. Yes, sir; I did and went through her; I got permission from Major Grant, and also from the U. S. Marshal.

Q. Did you make any inquiries of anybody aboard of her, as to whether she sustained any damages?

A. Yes, sir; I saw the captain and asked him if she was damaged any and he said, no, nothing to speak of.

Q. When was this; how soon after the collision?

A. The next day, or a day or so after.

Q. Did you look at the side of the ship?

A. I did.

Q. What did you notice?

A. I noticed where the Argo had struck her; the captain said that was where she had struck her.

Q. What damage, if any, did you notice to the hull?

A. It didn't appear to me to be indented at all, where the Argo had struck her was about eight feet aft of her stem, eight or ten feet aft of her stem.

Q. On the starboard side?

A. Yes, sir; and the only thing that I could see that had been damaged at all was the head was knocked off of a rivet. She struck her about right angles and a few inches back of where she struck the head of a rivet was knocked off and the paint was scraped off from the side of the hull of the Dumois at irregular places, aft of the place where the Argo struck her, indicated to me that the Dumois was in motion when she was struck.

O. M. Springer recalled for explanation.

Witness: When I was asked by Mr. De Gray what I considered the Argo worth, I said $20,000—by that, I meant what she would propably bring in the market at the time she was lost, considering the times, etc., but the Argo was actually worth, in my opinion, to a man who would want a boat of that class, as a yacht, all she originally cost, which, I understood, was $40,000.

NOTE OF EVIDENCE FOR MRS. HESTER.

Filed December 16th, 1897.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

On behalf of Mrs. Harrison P. Hester, we offer in evidence the depositions of following witnesses, viz:

Act 71 of 1884.
C. Harrison Parker.
H. G. Hester.
H. Seiferth.
Testimony of Captain James Brown.
Robert S. Orkney.
Charles Desseamus.
Isaac Broadhurst.
Samuel Jewitt.
Captain Bazile Jurisch.
Edwin C. Green.
Norbert Buras.
N. Deedes.
E. A. Conrad.
A. C. Lindaur.
Picture of Argo, marked Libelant No. 2.
Picture of boats in connection with evidence of Dedes and Jurisch.
Designation of line by Secretary of Treasury dividing high seas from rivers and harbors and inland waters, dated July 13/95, made pursuant to Sec. 2, Act of Feb. 19, '95.
Piece of Painted Wood, marked "Argo No. 1."
Piece of Rope, marked "Argo No. 2."

(Signed) DENEGRE, BLAIR & DENEGRE,
For Mrs. Hester.

EVIDENCE IN BEHALF OF MRS. H. P. HESTER.

Oscar M. Springer :
vs: : No. 13,319.
Norwegian S/S Albert Dumois. :

Testimony taken by consent in the office of Messrs. Denegre, Blair & Denegre, on December 15th, 1897, in the presence of Oscar M. Springer, William Grant, R. De Gray, George Denegre.

Testimony of Henry G. Hester and others. Filed Dec. 16, 1898.

Mr. Henry G. Hester, being duly sworn, testifies as follows:

Direct Examination.

By Mr. Denegre:

Q. Mr. Hester, you live in this city?

A. Yes, sir.

Q. You are the father of Harrison G. Hester?

A. I am.

Q. Do you know what his circumstances were?

A. I do.

Q. Do you know whether he had any means of his own?

A. None, except what he obtained from his daily labor.

Q. What was he making; do you know?

A. I do not know what he was making.

Q. Did he have a wife and child?

A. He had a wife; the child was born since he died.

Q. Has his wife any means?

A. None; she was entirely dependent on him.

Q. What was his occupation?

A. He was a journalist.

Q. How long had he been engaged in that occupation?

A. I think, including the work that he performed on Chicago papers, he must have been in that occupation for perhaps a year or 18 months.

Q. What were his prospects?

A. They were excellent.

Q. What was his capacity?

A. Well, I considered him one of the brightest young journalists in the city.

Q. What about his habits?

A. His habits were good.

Q. What about his industry and hard work?

A. His capacity for hard work?

Q. Yes; and his habits; whether a hard worker or not?

A. Well, his capacity for hard work, of course I am speaking as his father—in my estimation, his capacity for work was something remarkable.

Q. Do you know whether he had any offers or prospects from other places besides New Orleans in that line of business, in his line?

A. I do. He showed me, before his death, a letter that was signed by Halderman, of the Courier-Journal, based on Mr. Halderman having seen some of his work on the Picayune, and had been pointed out to him by Senator Martin, of Kentucky.

Mr. Halderman wrote to him and asked him if he would not keep him posted as to his whereabouts; that it was his intention to make him an offer on the Courier-Journal as soon as he had a vacancy. Now, I understand from my son—

By Mr. Grant: Never mind about what your son said.

Witness: That is only hearsay.

Q. Do you know generally, in what estimation he was held by the newspaper fraternity in this city, and express any opinion you may have heard?

A. It was a matter of public notoriety that he was held in the highest esteem, and considered one of the ablest young journalists here.

Cross-Examination.

By Mr. Grant:

Q. When was the child born?

A. The child was born on March 19th, 1897.

Q. State what was it; whether a boy or a girl?

A. A girl.

By Mr. Denegre:

Q. I asked you if you could not get Mrs. Hester to come down and testify in her behalf; please repeat the statement you made to me?

A. Of course, we could do that; but I would be glad if you could excuse her; she is very frail, and this thing has been a terrible blow to her, and we have been afraid to open up the subject to her. I think if her presence can be dispensed with it will be a blessing. Of course, if it is a necessity, it can be done, but I will prefer not to have it.

C. Harrison Parker:

Direct Examination.

By Mr. Denegre:

Q. How long have you known Harrison P. Hester?

A. Since his birth.

Q. He was named from you, was he not?

A. Yes, sir.

Q. You have been a journalist?

A. Yes, sir.

Q. Do you know anything of Harrison Hester's capacity in that line?

A. I took him on the Delta when I was running it and started him in business.

Q. What capacity did he show?

A. He was a very bright young man; very decided, a born

writer. Of course, I started him in business; he just began then, but he showed wonderful aptitude for business; was a ready writer and gave promise of being a journalist of very high order.

Mr. H. Seiferth, sworn, says:

Direct Examination.

By Mr. Denegre:

Q. You are the City Editor of the Picayune, are you not?

A. Yes, sir.

Q. Under whom was Harrison P. Hester?

A. Under me.

Q. From whom did he receive instructions when he started out with the Argo?

A. From me.

Q. What were your instructions to him?

A. We thought a trip was made necessary by the first information received from the management of the trip of the Congressional Committee to the Jetties; that there would be no room for the press on board the steamship Whitney, which had been tendered to and carried the Congressional Committee to the Jetties. As a matter of great public interest we thought it important to the Picayune to get a full and earlier account of the trip than would be possible if we waited the return of the Whitney. We, therefore, decided to engage the fastest and best small boat that we could find to make the trip on behalf of the Picayune, carrying with it members of our staff to follow the Whitney, attend as many of the meetings of the Congressional Committee as they could, and bring back as full a report as possible. It turned out that a few hours before the departure of the Whitney, it was decided to take members of the press along.

Mr. Denegre: Never mind about that.

Witness: I want to explain how the boat came in—

By Mr. Grant: We are not concerned about that.

Mr. De Gray: Let him go on and state—

Witness: It won't take much time.

Q. The Picayune was represented by you?

A. The Whitney's plan, as we understood it, was to return at 3 or 4 o'clock in the morning, which would have been too late for any account to get in the edition that morning. It was therefore decided to let the Argo make the trip, as originally planned, knowing that with her speed and by leaving an hour or so before the Whitney she would be able to bring a good account in time to be published in the morning paper, and add to the reputation of the Picayune as a newspaper. This expedition was placed in charge of Mr. Hester, with Mr. Lindaur and Mr.

Blesine to co-operate in the work. Is not that an answer to the question you want?

Q. What I wanted to know was, did Mr. Hester make arrangements for the boat, or the Picayune?

A. The Picayune made the arrangements for the boat.

Q. What authority did Mr. Hester have over the boat?

A. Mr. Hester was in charge of the literary part of the expedition.

Q. What power had he, or control, over the movements of the boat?

A. He had no control beyond asking the Captain to follow the movements of the Whitney, and bring the members of the staff at a point of vantage.

Q. You say he was chartered to go down—

A. I also asked him to ask the Captain, in case it was necessary to come up ahead of the Whitney that morning, to make as fast a run as possible in order to carry out that plan on the return trip.

Q. You say the Argo was charged to get Hester, of the literary department, in ahead of the Whitney?

A. Yes, sir.

Q. Had he any authority to order her on any other mission?

A. No, sir.

Q. Then, as I understand it, he—

Mr. Grant: Do not put words in the mouth of the witness; ask him the questions.

Q. You say he went down on the Argo in charge of the literary department; that the only control he had was to ask the Captain to follow the Whitney, and, if necessary, to make a request to increase the speed on the return trip?

A. Yes, sir.

Q. How much was Mr. Hester earning?

A. I don't know the exact amount of his salary. I think it was $17.50 at the time. I had promised him I would make a raise of salary immediately after he made his probation, because he was very bright and enterprising and especially energetic, and I was in hopes of bettering his position, because he had only shortly before been married.

Q. (By Mr. De Gray): What is that 17½?

A. $17.50 a week. I think that is what it was. I am not sure. Almost positive it is $17.50 a week.

Q. What capacity had Mr. Hester shown while under you on the Picayune?

A. His capacity was specially marked. In the short time that he was [there] he had shown considerable enterprise and suggested many new ideas.

Q. How was he as a writer?

A. He was a very fair writer.

Q. Did he give any promise for the future?

A. Yes, sir. He came to the Picayune at a time when there was no demand for a new man, but knowing him and knowing his work and assuming that he would be able to make himself valuable here, I assisted him in securing a place.

Q. Was he a younger or older man than Lindauer and Blesine?

A. He was younger than Lindauer, and, I judge, about the same age as Blesine.

By Mr. De Gray:

Q. Mr. Blesine was also working on the Picayune?

A. He was; doing extra work.

Q. He was also on this expedition for the Picayune?

A. Yes, sir; he was doing extra work, with a promise that as soon as vacancy occurred that I would put him in it.

Q. In a permanent position?

A. Yes, sir; when a vacancy occurred.

Q. You know what his capacities were, then?

A. Yes, sir; I had a prettv fair idea of them.

Q. What would be a fair compensation for such services as he was capable of rendering?

A. I think after he had secured a permanent position he would have earned from $20 to $25 a week. That is the usual salary for reporters, after they have secured a permanent position.

Q. Had he demonstrated his capacity to fulfill a permanent position?

A. He was very eager and anxious to work, and was always bringing in items of one kind or another in order to show his ability; he generallv volunteered for every task in sight, hoping thereby to hurry up his employment. Only shortly before that, Blesine voluntarily got up a very interesting story on the Survivors of the Walker Expedition to Nicaragua, an illustrated article of four or five columns, which he handed in simply as a proof of his ability.

Q. He had demonstrated to you, as City Editor of the Picayune, that he was worthy of permanent employment?

A. Yes, sir; in fact, he volunteered for this trip, because he thought that there would be a great deal of work, and that it was a chance of showing what he was capable of doing.

Q. He had satisfied you, as City Editor, that he was worthy of a permanent position?

A. Yes, sir; I had promised to give him a chance as soon as a vacancy occurred.

Q. And the salary of a permanent position would be about from $20 to $25?

A. Yes, sir; he was not to get that right away; after he had served his probation he would naturally have secured a higher salary.

Q. Well, a fair salary for him when he came to get a permanent position would have been $20?

A. No; not that at first; about $17.50 at first.

Q. The same as Hester was getting?

A. Yes, sir; they do not generally start at that salary. They have to work their way up.

Q. Did not his abilities, as you saw them, satisfy you that his services were worth $20 a week?

A. I think he would have gotten that in the course of a year.

Q. Or more?

A. He would have gotten that in the course of a year; more later on. If a man proves his ability, his position on the Picayune is as much as permanent, and for that reason, more than any other, we allow them to work their way up to a permanent position gradually.

Q. Let them keep their positions as long as they want to stay?

A. Yes, sir.

By Mr. Springer:

Q. Did you personally have anything to do with the charter of the Argo?

A. Except in a manner to conduct the investigation.

Q. I ask you if you had anything to do with making the arrangements for the charter?

A. Personally, no.

Q. Who chartered the Argo and made the arrangements?

A. It was made for the Picayune by Mr. Rapier, the Manager.

Q. Do you know that the Argo was under the charge and direction of Mr. Hester?

A. I know that Mr. Hester was in charge of the expedition.

Q. The Argo did not go until he said so?

A. It did not go until the Picayune said so through him. It did not leave until it was necessary to make the trip.

Q. She didn't go until Mr. Hester announced that he was ready to make the trip?

A. She didn't go until the staff was on board.

Q. For the purpose of reporting the meetings of the Congressional Committee?

A. Yes, sir; and to bring up the report as expeditiously as possible.

Q. In order that it might appear in the morning edition of the Picayune?

A. Yes, sir; otherwise it would be valueless.

Q. The Argo would not have turned back unless Mr. Hester said so; the whole expedition, including the managament of the Argo, was under Mr. Hester; is not that a fact?

A. The news part of it was under the management of Mr. Hester.

Q. He gave instructions where to go, and the management of the Argo was virtually under his directions.

A. To that extent, yes, sir.

By Mr. Denegre:

Q. You stated that Mr. Hester's salary probably would have been raised in a short time; what raise would he have received?

A. He would have gotton $20 right away.

Q. What would have been the next raise?

A. He would have gotten a raise to $25 then.

Q. What are your head reporters paid?

A. $25 a week are now paid. When I was reporting I was promised, I got $30 a week.

Q. Do editorial writers get more than $20 a week?

A. Yes, sir; I think so.

Q. Did Mr. Hester have the making of an editorial writer in him?

A. He had the making of a first-class newspaper man, and I think in time could have aspired to almost anything in the newspaper business, because he was very pushing and energetic, and was one of those who was always looking for work instead of waiting to be ordered to do a thing.

By Mr. De Gray:

Q. Was that equally true of Blesine?

A. I said that Blesine was volunteering himself for every job in sight in order to obtain a permanent position.

EVIDENCE OF CAPTAIN BROWN AND OTHERS, OFFERED IN BEHALF OF MRS. HESTER, AS PER NOTE OF EVIDENCE.

(See Index of this Transcript.)

Note of Evidence for Claimant. Filed December 16th, 1897.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

List of Claimant's Evidence this day offered:

1. Deposition of L. B. Rustad, Master, and Exhibits.
2. Deposition of Nicholas Theodore.
3. Deposition of T. M. Miller.
4. Deposition of Wm. H. Lumbard, Pilot.
5. Deposition of Nicholas Sibitsen, second mate.
6. Deposition of T. J. Woodward.
7. Deposition of Johannes Lund.
8. Deposition of Bernt Larsen.
9. Deposition of James B. Herreshoff, and Exhibit.
10. Deposition of Nathaniel G. Herreshoff, and Exhibit.
11. Deposition of C. W. Young.

Petition and proceedings under the Limited Liability Act. Dec. 16, 1897.

(Signed) ROUSE & GRANT,
Proctors for Claimant.

EVIDENCE FOR THE CLAIMANT.

Testimony of Captain L. B. Rustad. Filed December 16th, 1897.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

Testimony taken on behalf of Claimant in the above entitled and numbered cause on the 11th day of December, 1897, before Frank H. Mortimer, U. S. Commissioner.

Appearances:
Messrs. Rouse & Grant, Proctors for Claimant.
R. De Gray, Esq., Proctor for Libelant.

Captain Ludwig B. Rudstad, witness, sworn on behalf of Claimant, testified as follows:

Direct Examination.

By Mr. Grant:

Q. What is your occupation?
A. Captain.
Q. What were you in January, 1897?
A. I was Captain of the Albert Dumois.
Q. Were you then in command of her?
A. Yes, sir.
Q. In what part of the vessel were you on the morning of January 28th?

A. I was below in the saloon when the collision took place.

Q. What did you first hear in the way of signals?

A. I heard the pilot blow two whistles.

Q. What did you do then?

A. I didn't do anything; but soon after they blew two again, then he blew again; yes, and then he blew four or five whistles and stopped the ship, and then I run up in what they call the Companion Way, and came up on deck, and this thing struck us, I heard Capt. Lombard sing out back, "Back your ship." Well, in looking over the side I saw a small little yacht, she struck us about 8, 10 or 12 feet from the stem.

Q. I understand that you did not hear any signals in response to the Dumois?

A. No. Well, then I saw the yacht; she drove alongside of us and then she went full speed to the west bank.

Q. How long after the danger signals was it before the Dumois reversed her engines?

A. How long after the danger signals? She did that at once.

Q. Going the rate of 9 miles an hour, up stream, how far would you go before the vessel would stop under reversed engines?

A. That depends on circumstances, how deep she is loaded, what current is against her; under ordinary circumstances I think she would take, full speed ahead or full speed astern, she would take half a minute before the headway is broke.

Q. Wouldn't the headway be broken immediately her reversal took place?

A. No, sir.

Q. When running against the current?

A. It would take about a half a minute.

Q. She would come to a dead stand?

A. Yes, sir.

Q. How long after the Argo struck the Dumois was it before the small boat came to the Dumois with passengers and crew on board?

A. Let us see, from the time she struck she was—the boat was swinging around; they couldn't handle the boat well.

Q. The Argo?

A. No, I mean the small boat was swinging around; they couldn't manage the boat—I suppose about 20 minutes or half an hour; 20 minutes I think, it is not for certain to say, but about 25 or 30 minutes from the time she struck until they had the boat alongside.

Q. After the Dumois stopped, what did she do in regard to rescuing the passengers?

A. We put out our boat.

Q. Was the boat in the water when the small boat came up with the crew of the Argo?

A. Yes, sir; the boat was in the water after the crew was on board.

Q. When the crew came on board, what did they say in regard to the passengers?

A. They were looking; they said they missed two; they couldn't find them, so they said, they might be swimming ashore.

Q. What did you do in the way of finding the passengers?

A. We were laying there I suppose about an hour and a quarter.

Q. The Argo disappeared in a few seconds after she struck you, didn't she?

A. Well, yes; I saw the boat about 5 or 8 minutes, saw the Argo after she struck us.

Q. Did you throw anything overboard?

A. Yes, sir; we threw life-preservers and planks and ladders, what they use to go down in the hold.

Q. And after staying there that time, you started up stream to New Orleans?

A. Yes, sir.

Q. Whose watch was it at the time the collision occurred?

A. The second mate's watch, Sivertson.

Q. You don't know what has become of Johnson, who was look-out that night?

A. No, sir; we have been writing to Mobile about him, but we can't find him; he left here for Mobile.

Q. Soon after this collision?

A. Yes, sir; about a day or two.

Q. What has become of Wessel?

A. He left for Mobile too.

Q. Did you discharge him, or did he go himself?

A. I discharged him, because he wanted me to pay him to stay; he wanted me to bribe him to stay; I consulted the Consul about it.

Counsel for libelant objects to the question on the ground that the testimony of that character in no way concerns the libelant in this case, and on the further ground that the process of the Court was always open to this man to compel his appearance, and if he testified to things that were false, to send him to the Penitentiary.

Q. Do you know where he is now?

A. I guess he is in Mobile.

Q. He might be in Mobile?

A. Yes, sir.

Q. State whether, in consequence of the collision you placed your vessel in Dry Dock?

A. For the damage you mean?

Q. Yes.

A. Yes, sir.

Q. What dock?

A. In the Marine Dry Dock.

Q. Have you got the bill paid for repairing?

A. No, I have got the general account, I went into Mr. J. D. Connell's Iron Works but he was not in, to get the bill.

Q. Can you tell how much you paid the Dry Dock for their services?

A. Well, there is a bill, $627.07.

Q. Did you pay that bill?

A. Yes, sir.

Counsel for claimant offers bill referred to in evidence and it is marked "A."

Counsel for libelant objects to the bill on the ground that even if correct which is denied, it in no manner concerns the libelant in this case.

Q. Would you have been compelled to have put the vessel in dock for repairs if this collision had not occurred?

A. No sir—of course we had to put in 14 new rivets and three frames was broken in her, of course that is setdown in the journal and signed by the Consul.

Q. Did you have the plates and the knees repaired which had been broken and sprung by the collision?

A. I had them repaired temporarily.

Q. What was the amount of that bill?

A. There is the bill there.

Q. $185.75?

A. Yes sir.

Q. How much did it cost—will you get a copy of Mr. J. D. Connell's bill for $185.75?

A. Yes sir.

Counsel for claimant offers Bill referred to, to be produced and marked "B."

Q. State what other expenses you had for repairs?

A. $627.07, McLellan Dry Dock, then $306.25 for paint Woodward-Wight & Co., of course some of these are in the hands of the Insurance Club and—I can get a copy from Woodward, Wight & Co.—then there is Gass' bill of $55 for paint.

Counsel for claimant offers bill referred to for $55 and marked "C."

A. Then towing to and from dry dock, $30.

Claimant offers two bills of W. G. Coyle & Co., and marked "D" and "E."

Q. Was the Dumois injured in this collision below the water line?

A. Yes sir.

Q. In what respect?

A. How many feet.

Q. No, what was the injury below her water line?

A. Three frames was broken and I suppose we put in all, 14 or 16 new rivets in the plates.

Q. Were the plates sprung?

A. No, not sprung, but they were bulged in.

Q. That was repaired.

A. No, that is not done yet. No, that has to be done when the ship is going home.

Q. When do you expect to make that repair?

A. Next October when she gets home.

Q. What would that cost?

A. I don't know, there is two plates to be taken out and rolled over. It will take an engineer to do that.

Q. You can't tell how much it will cost?

A. No, may be I say too much may be I say to little, you had better see Mr. Johnson or Mr. Connell about it.

Q. Why didn't you have permanent repairs made at that time?

A. To save expense, of course we can do it so much cheaper at home.

Q. After a vessel has been in collision with another, is it necessary that she should be docked to ascertain what injuries she had suffered?

Counsel for libelant objects to the question on the ground that it is leading and suggestive.

Q. After a vessel has been in collision with another, state whether it is necessary or not that she should be docked to ascertain what injuries she had suffered?

Counsel for libelant makes the same objection to this question, it being preceded by the one immediately above suggesting the answer.

Cross-Examination.

By Mr. De Gray:

Q. You said something about some bills being in the hands of Insurance Club; what bills have you reference to; what bills do you mean?

A. That is, a copy of this general account here.

Q. Of which general account? Why should you send bills to the Insurance Club or Insurance Company?

A. Because the ship is insured.
Q. Insured where?
A. At home.
Q. Have you got a copy of her policy of insurance?
A. No, sir.
Q. How do you know she was insured?
A. Because we always have the ships insured.
Q. Do you insure your ship against damages from collisions?
A. It depends on how the policy read.
Q. Well, how did this policy read?
A. I can't tell.
Q. Don't you know she was insured against damages for the collision in this case?
A. I suppose—
Q. Don't you know it?
A. When I don't know, I can't say it.
Q. Then if you don't know it, why did you send these bills to the Insurance Company?
A. I know she was insured, but I don't know whether it is for total loss or for damages.
Q. Where is a copy of that policy?
A. You will have to write home to the owners.
Q. Have you not had a copy?
A. No, sir.
Q. Have you not got a copy now?
A. No, sir.
Q. Is there not a copy in the hands of your agent?
A. No, sir.
Q. Is there not a copy in the hands of the Consul?
A. No, sir.
Q. Don't you have a copy on board of the ship?
A. No, sir.
Q. Have you ever seen a copy?
A. Yes, sir; five years ago.
Q. Have you ever communicated with the Insurance Company with reference to this collision?
A. To the Agent, yes sir.
Q. Who is the Agent of the Insurance Company?
A. Captain Over Lange, in New York.
Q. Why did you report to him?
A. Because we have to report to him.
Q. Why?
A. Because he is the Agent for the Underwriters at home.
Q. Did you ever have any communication from him since, did he write to you?
A. 14 days ago he was here and I spoke to him.

Q. Did he write to you?
A. I wrote to him and sent the papers.
Q. What did he say when he wrote back?
A. He didn't say anything.
Q. Did he write back to you?
A. Yes, sir; he acknowledged the receipt of the papers.
Q. Did he pay these bills?
A. The Underwriters Agent in New York, have nothing to do with paying the bills, he only looks at them and sends them to Norway.
Q. You sent these very bills concerning which you have testified about to him as the Underwriter's Agent?
A. Yes, sir.
Q. For what purpose?
A. Because he had to send them home.
Q. What for did he have to send them home?
A. I don't know.
Q. Who told you to send them to him?
A. My owners.
Q. What do your owners say in the letter which they wrote to you, when they told you to send them to him?
A. It is so long ago, I can't recollect.
Q. Where is the letter?
A. It is on board.
Q. I will ask for it, I ask that you produce it before you go out, and I ask that you produce all the letters in reference to the insurance on this boat before you leave—will you do so?
A. There is nothing in the way, certainly, I have no objection.
Q. You will give the detail of this bill of Woodward, Wight & Co., for paint?
A. Certainly.
Q. How old is the Albert Dumois?
A. She was built about the first of June, 1891.
Q. Where has she been running from June, 1891?
A. She has been running on the coast here between the United States and Central America.
Q. During all that time?
A. Yes, sir.
Q. How often has she been in the dry dock, during that time?
A. When running to New York, she was in dry dock every four months, three times a year, but here twice a year, eight months between time she was dry docked.
Q. Somewhere between six and eight months?
A. Yes, sir.

Q. She was in the dry dock here in March, on March 10th, 1897; when was she in dry dock before that?

A. She was here too in the Marine Dry Dock.

Q. In March, 1897, she was put in this dock; when was she in the dock prior to that?

A. In August, 1896.

Q. She was put in dry dock on the 10th of March, 1897, as appears by your bill?

A. Yes, sir; that is right.

Q. When was she in dock before March, 1897?

A. I say August, 1896, in the Marine Dry Dock over here.

Q. What time was she in the dock in August, 1896?

A. I can't remember exactly the date, but it was the latter part of August.

Q. How much money did you expend on her at that time?

A. That I can't give you correct.

Q. Well, about?

A. The dock bill is the same as it is there—five hundred and some dollars.

Q. It was about the same as this?

A. Yes, sir; it is according to the tonnage; oh, you mean the dry dock bill.

Q. Yes.

A. Yes, so much per ton.

Q. Did you paint her when you had her in the dock in 1896?

A. Yes, sir.

Q. How much did it cost to paint her when she was in the dock in August, 1896?

A. Just the same kind and quantity of paint.

Q. And it cost the same amount?

A. Yes, sir. It might be the same cost; it was summer and the paint spread a good deal.

Q. But in substance it was the same cost?

A. Yes, sir.

Q. And the cost for putting it on would about be the same?

A. Yes, sir; $55—no, I think I paid $60 the first time. Well, there is only $5 difference.

Q. Well, in this painting in 1896, was that the paint for the bottom or paint for the whole ship sides out of the water and under the water as well?

A. No, just for the bottom paint.

Q. How long is she?

Q. She is 210 feet.

Q. This collision, I think you said, where she was struck, was about eight feet aft of her stem?

A. Between 8 and 10 feet.

Q. Something along there on the starboard side?

A. Yes, sir.

Q. Was it necessary to paint the whole ship's bottom, say 200 feet, that was aft of the place where the collision occurred, because this collision happened?

A. Of course, she was in the dry dock; we were bound to paint her.

Q. When was she put in the dry dock since March, 1897—had she been in the dry dock since?

A. She was put in the first part of September last.

Q. She was in the dry dock in August, 1896—when was she in prior to August, 1896?

A. I was not captain of her then; I was home; but I can tell you that she was in about March, 1896.

Q. Well, then, is it not true that when you put her in the dock here in March 10th, 1897, it was the usual time for putting her in dock?

A. It is about six months, yes; but we could have run a month longer or a month shorter; the Henry Dumois is running now nine months out of dry dock; she is the same as the Albert Dumois; but we happen to be leaking.

Q. This collision occurred in January, 1897?

A. Yes, sir.

Q. When did you make a trip after January, 1897; the first trip?

A. We were 14 days lying here, I think; then we made one or two trips, or one trip, I think.

Q. Between the time of the collision and the time of her going in the dry dock, how many trips did you make?

A. It would take her 14 or 15 days on a round trip.

Q. Well, how many trips did you make? That is what I want you to fix?

A. I can't exactly tell you now.

Q. Go right over to the Customhouse and find out what time you cleared?

A. It is after 12, and the Customhouse I think is closed.

Q. Anyway, you made a trip every 14 days?

A. Yes, sir.

Q. Everytime you put your vessel in dock, you paint her bottom, do you not?

A. Yes, sir.

Q. How much would it cost to paint from the stem of the boat to 12 feet aft?

A. I cannot exactly tell you that.

A. Or 15 feet aft?

A. I can't tell you that.

Q. Where is the most painted surface, on the forward part of the ship or under her amid-ships?

A. That is about the same—of course the ship has to be painted all over.

Q. No—I am asking you where is the most space to be covered?

A. Every one must know that, it is amid-ships.

Q. Captain, is it not true that inasmuch that your ship had been in dock in August, 1896, and she went from that time to March, 1897, that March, 1897, was the usual time for her to go in dry dock for repairs?

A. For repairs, no—paint—

Q. For paint?

A. We can run six months; we can run nine months.

Q. But you have already said that from 6 to 8 months was the usual time?

A. Yes, sir.

Q. Then, was March 10th, 1897, the usual time for her going in?

A. We could run a month longer.

Q. That is not what I asked you; I asked you—

A. That is the answer I gave.

Q. Wasn't that the usual time for you to go into the dock?

A. It was about there, from 6 to 8 months.

Q. It was her usual time?

A. Between six and eight months is her usual time.

Q. That was the usual time for painting her bottom?

A. Yes, sir.

Q. Captain, did the collision make it necessary to paint this ship's bottom, it being the usual time for painting, say from 10 to 12 feet aft of her stem and on one side—did it make it necessary to paint the whole bottom—

A. Yes, sir; when we do go in dry dock we paint her all over.

Q. That is not what I asked you—did the collision that you had with the Argo make it necessary for you to paint that ship's bottom aft of the point of collision, from aft of the point to her stern or a short distance aft of the point of collision?

A. Certainly.

Q. Did the collision injure her amidships?

A. No.

Q. Did it injure anywhere on her stern?

A. You know the paint was scraped along there.

Q. Did he scrape along her bottom?

A. No, but on the side.

Q. We are talking about painting the ship's bottom; not the side.

A. Yes, sir; the ship's bottom. Mr. De Gray, the ship's bottom is 14 feet up on the side; we call that bottom paint.

Q. How much free board has she got?

A. She has about seven feet of freeboard, seven or eight feet, between that.

Q. How high above the water line was it that the Argo struck her?

A. She struck her about four feet, I think, under the water line and then four or five feet above the water line. She had an outlying stem and the figure-head struck her first. The Argo had an iron frame.

Q. How do you know?

A. She was a composition ship.

Q. How do you know?

A. So they say.

Q. That is what we are talking about?

A. She struck there and there.

Q. Your ship falls back from the bow, from the sides, falls under, goes down this way?

A. No, no; very little.

Q. Well, 12 feet aft of her stem is she perpendicular there?

A. No; about a little up.

Q. Well, little high, how do you mean? Does it fall from a perpendicular at a point from 8 to 12 feet aft of the stem of the Dumois, is her side perpendicular?

A. No.

Q. How far does it fall off from a perpendicular?

A. I can't tell you that; better take an engineer to measure that up.

Q. No, but you are the Captain of the ship?

A. I can't tell you how much she is leaning. I understand what you mean—how much she slopes; I can't say anything about that; that has to be measured up.

Q. Have you no idea about it?

A. No.

Q. Is she a sharp ship?

A. Yes, sir; she is a sharp fruiter.

Q. Now, Captain, if no collision had occurred, would you not have painted the bottom of the Albert Dumois just the same as you did at this time?

A. Yes, sir; we would.

Q. And the price that painting cost was the usual contract price?

A. The same price.

Q. Captain, didn't you put in rivets [in] the plates of the Albert Dumois while she was lying up here at the levee when the Marshal was aboard?

A. Yes, sir; we put three; that was above the water line; we had not seen anything on the bottom then.

Q. When did you see something on the bottom?

A. When she started to leak.

Q. When did she start to leak?

A. The trip to Port Limon.

Q. And then you came back and made another trip?

A. No; we put her in dry dock.

Q. On the trip?

A. Yes, sir.

Q. Then it was not the first trip that you made to Port Limon that she made a leak?

A. No; it was the second trip.

Q. Was it the second or third?

A. No; the second, I think; I cannot exactly state; but the journal can tell you that.

Q. How much water did she make?

A. It is hard to tell, because there is a fore peak tank that we pumped out every four hours.

Q. Captain, after the people from the Argo came in your ship, in your cabin, didn't Captain Brown tell you that he blew the first whistle for your boat and didn't you answer, "And I blew the second one for you after you blew the first one?"

A. No.

Q. And then didn't he say that "I blew another whistle for you and you the second one?"

A. No, sir.

Q. Didn't he say so in the presence—didn't [you] have that conversation with him in the presence of Mr. Lindauer, who was one of the parties who was saved from the Argo, a newspaper reporter—now, think well?

A. I don't know whether there was any newspaper reporter there or not.

Q. Wasn't there a man by the name of Lindauer that was saved from the Argo that came on your ship?

A. No; I don't know any of the men.

Q. You know who Captain Brown was?

A. Yes, sir; he was the first man that came on board.

Q. Now; didn't you acknowledge to Captain Brown, in the presence of the people that were from the Argo—didn't you admit in your cabin that Captain Brown blew the first whistle and that you blew the second and that then Captain Brown blew the first again?

A. No, sir.

By Mr. Grant:

Q. What did Captain Brown say when he came on board?

A. The first thing he said—he was talking about missing two men; he was looking around for them. I asked him if he was the captain and he said yes, and then he was going around and asking his shipmates that were with him, if they had seen the other two men. That is all what I spoke to him.

EXHIBIT "A."

Offered in Connection with Evidence of Capt. Rustad. Filed December 16th, 1897.

(Duplicate.) New Orleans, March 13, 1897.

Stm. "Albert Dumois" and Owners

To McLellan Dock Company, Dr.

Marine and Ocean Docks and Ship Yards in Algiers.
Office, 727 Common St., New Orleans, La.

Mch. 10.	To Dockage, 1058 Tons at 25c—264.50		
Mch. 13.	To 3 days' Demurrage, at 84.64..253.92		
	To 3 days foreman at 5.00.....	15.00	
	To 35 days' labor at 2.00.....	70.00	
	To 15¾ days painters ⅞ at 50¢..	7.87	
	To 2 large brooms at 40¢.....	.80	
	To use of pump, cleaning and filling tanks..	15.00	$627.09

E. and O. E.

N. O., Mch. 16th, 1897.

Rec'd Payment.

McCLELLAN DOCK CO.,
Per Hayden.

EXHIBIT "B."

Offered in Connection with Evidence of Capt. Rustad.

(Not Produced.)

EXHIBIT "C."

Offered in Connection with Evidence of Capt. Rustad. Filed Dec'r 16, 1897.

New Orleans, March 12th, 1897.

M. S. S. Albert Dumois & Owners,

To Phil Gasser, Dr.

House, Ship and Steamboat Painter.

Shop at Canal Street Ferry Landing, Algiers.

To painting the bottom of said steamer two coats.....$55.00

Received payment.

(Signed) PHILIP GASSER.

EXHIBIT "D."

Offered in Connection with Evidence of Capt. Rustad. Filed December 16th, 1897.

W. G. Coyle & Co.,
Coal and Towing,
Main Office, 323 Carondelet Street.
New Orleans, La., U. S. A., Mch. 12, 1897.

Sold to S. S. Albert Dumois & Owners:

Mch. 10. Towing S. S. Albert Dumois from T. & P. Ldg. to Marine Dry Dock..... .. 10

Mch. 12. Towing S. S. Albert Dumois from Marine Dry Dock to I. C. Fruit Ldg..... 10 $20

Duplicate.

Paid W. G. COYLE & CO.,
Per Leehman, Mch. 16, 1897.

(Stamped on face) Paid, Mar. 16, 1897, Woodward, Wight & Co., Ltd.

EXHIBIT "E."

Offered in Connection with Evidence of Capt. Rustad. Filed December 16th, 1897.

W. G. Coyle & Co.,
Coal and Towing,
Main Office, 323 Carondelet Street.
New Orleans, La., U. S. A., Mch. 8th, 1897.

Sold to S. S. Albert Dumois & Owners.

Towing S. S. Albert Dumois from I. C. to T. & P. Wharf..$10

Paid W. G. COYLE & CO.
(Duplicate.) Per Leehman, Mch. 16, 1897.

(Stamped on face) Paid, Mar. 16, 1897, Woodward, Wight & Co., Ltd.

TESTIMONY OF CAPT. NICHOLAS THEODORE.

Filed December 16th, 1897.

O. M. Springer :
vs. : No. 13,319.
S. S. Albert Dumois. :

Testimony taken in the above entitled and numbered cause on the 26th day of May, 1897, on behalf of Claimant, before Frank H. Mortimer, U. S. Commissioner.

Appearances:
Rouse & Grant, for Claimant.
R. De Gray, for Libelant.

Captain Nicholas Theodore, witness sworn on behalf of Claimants, testified as follows:

Direct Examination.

By Mr. Grant:

Q. What is your name, age and residence?

A. Nicholas Theodore; somewhere around 74, and residence corner Dorgenois and Barracks streets.

Q. What is your business?

A. My business is pilot and captain.

Q. On what waters?

A. From here to the Jetties and up the Atchafalaya and Red rivers, and Vicksburg.

Q. How long have you been a pilot on these waters?

A. I have been a long time; before the war; before the papers came out.

Q. You are licensed?

A. I am licensed now, after I came back from the Confederacy.

Q. Where were you on the 28th of January last?

A. I was on board the Day Dream.

Q. Where was the Day Dream?

A. She was down at the Canal, what you call the new Canal.

Q. On the Mississippi river?

A. Yes, sir.

Q. Did you see the collision between the steamer Argo and the steamship Albert Dumois?

A. I saw the collision between two different boats; I couldn't tell you what boats they were at night.

Q. Have you ascertained since what boats they were?

A. Afterwards we find out; the next morning we knew what boats they were; not before, because it was dark when they were passing in front of me. I couldn't tell one boat from the other. I couldn't tell what names they had.

Q. At what time did the descending boat pass the Day Dream?

A. It passed about five minutes before the collision strike, before they struck together.

Q. Was it after midnight or before midnight?

A. It was somewhere about midnight; I don't see the time.

Q. Was the Day Dream tied up to the bank near the New Canal?

A. It was at the time he passed me.

Q. When the descending boat, which we will call the Argo, passed the Day Dream, how near was she to the Day Dream?

A. It was near enough for me to see it was a white boat; that is all I can tell; I couldn't tell how many feet it was away; I saw it was a white boat from my chimney light, and the boat, passing alongside of me, I could see it was a white boat; that is all I can say.

Q. Was the night dark?

A. It was pretty dark, sir.

Q. How far off could you see a white boat on a dark night like that?

A. I don't think I could see it very far, except the light was there; that was the way I saw it.

Q. Could you discover the color of the boat as she passed down?

A. Yes, sir; I saw it was a white boat; that is all I saw. He blew me one whistle, because I was scared it would strike me I had to answer; I was fastened to the tree and I was in the pilot house yet, because it was cold weather, and I looked out to see what kind of a boat it was because I never heard the whistle before; so I looked out and saw it was a white boat passing close to me.

Q. Could you see whether she was near enough to make you apprehend a collision?

A. I was scared him come into me; I was scared myself; that is why I jumped out of the pilothouse to see. His lights don't show me which way he was coming. I didn't know whether he was coming to me or going on down. I couldn't see any red or green lights. I only saw a bunch of lights, all kinds.

Q. Could you form an opinion as to how many feet off she was?

A. I couldn't swear how many feet; I know she was not the length of my boat.

Q. How long is your boat?

A. 109 feet.

Q. What signals did you hear her blow first?

A. The first signal, it was before the boat passed, for us—I don't understand—

Q. I want to know what was the first signal that the Argo blew?

A. He blew one whistle for me, and I saw it was coming so close I just pulled my whistle. I gave him one whistle and at the same time he blew another whistle. I was in shore. I didn't know if it was meant for me, one whistle, or blowing two whistles for another boat. I know I blew one whistle to answer her.

Q. How many whistles in all did she blow?

A. All I heard was two whistles; then I went inside of the pilothouse.

Q. Did you see a vessel coming up the river at that time?

A. I didn't see the vessel coming up at the time he blew, but the time this fellow that was fastening the boat, he said boat coming behind astern, and then I put my head out and saw the boat. It was in my least calculation about 200 feet below. I couldn't tell; more or less; then all at once I saw the boat go right across the river, the boat below was going across, and this boat coming down, instead of going right straight ahead she changed her course, so far as I could see, and comes up with the boat that was going across, and before it was in the middle of the river the boats came together; that is all I saw. I don't know what boats they were; only I heard the next day—

Q. Were you there all that night?

A. Yes, sir; I laid in the same position. I would like to have moved off if I knew then what I know now, I would move very quick; I have a good many friends.

Q. There was no collision that night?

A. No, sir, not that I know of; it was a very cold night.

Q. Did you hear any whistles from the boat coming up?

A. No, sir; I was inside of the pilothouse; I didn't hear any whistles from below at all.

Q. How many luggers were there at the landing?

A. Alongside of me I had one; I went across the river and got it. There was two men pretty near drowned that night. There was four or five above me, about 100 feet.

Q. How many luggers were there altogether?

A. There was my boat, one, one alongside of me, another—

Q. That was Captain Jurisch's boat?

A. Yes, sir; and then I left two boats above that I brought down, two or three, I don't know how many, before that; I couldn't tell how many were there. I brought three boats myself there.

Q. How was your boat tied up, by the stem—was she out in the river or was she lying alongside of the bank?

A. She lay alongside of a tree; we got a line around the tree.

Q. Where did Captain Jurisch's boat lay, outside of you or inside?

A. She lay outside. The time we came there he was there. I told the young man to see about the house; I missed the house; I told the young man to look out for the house, a land mark on shore, and he told me he couldn't see the house, and I couldn't see it myself; at the same time I find the tree, and I found out the house was burned down; that is the reason I couldn't find it.

Q. How far below the Canal was the Day Dream tied up?

A. Somewhere about 150 or 200 feet.

Q. What lights did you have out there?

A. I had my chimney light; I had the towing light, and I had red and green lights yet because we were just landed there.

Q. Which way was the bow pointed?

A. Up stream.

Q. How long had you been tied up before the Argo came along?

A. We was just taking the lines in at the same time when the Argo passed us.

Q. Then, just before the Argo came you had been going into a landing there?

A. I was at the landing before the Argo came down.

Q. What had you been doing before you tied up?

A. I went out to catch that lugger.

Q. Captain Jurisch's lugger?

A. Yes, sir.

Q. Had she gotten away?

A. He comes down with me and he wanted to go on the wharf and he let his lines go; his lines was freezing because it was a very freezing night and the wind took him way cross the river; she drifted away and I went after her.

Q. You had gone after her and had just come back before the Argo blew?

A. Yes, sir; I was working about two hours.

Q. Did you see the lights of the Dumois?

A. I saw the green light; it was going across the river, and the head light.

Q. About where in the river did the collision take place; which side of the middle?

A. It was pretty near right in the middle of the river time it strike; time I see it it was this side of the river, and before it comes together, one going up the river crossing that way, and the other one going after that light all the time; I could see so much of the boat going right to the light.

Q. You could see the Argo going right to the light?

A. Yes, sir.

Q. Could you see whether the Argo changed her course after she passed you?

A. It was turning all the time to go cross to that boat, the boat that was coming down the river went right straight after the light; she kept turning out for the green light, ran right after it; it didn't take so long to do that; just the time I am talking here with this gentleman.

Cross-Examination.

By Mr. De Gray:

Q. Who was your pilot that night?

A. I am pilot myself.

Q. Didn't you have a pilot on your boat?

A. No, sir; I was in the pilothouse.

Q. Did you have a deckhand?

A. I had one; yes, sir.

Q. What was his name?

A. His name was Nicholas Dedes; he was the deck-hand then.

Q. Who was—he was awake?

A. He was fastening the boat.

Q. Who was your engineer?

A. The engineer at the time? I can't remember who was the engineer that night, sir, because I change them from one to another, and I don't like to say a thing when I don't remember.

Q. I understand you had tied your boat up—

A. I had just tied my boat up.

Q. Then there was a boat coming down the river which blew one whistle?

A. Yes, sir; at the same time blew another one.

Q. And then you blew one in reply?

A. Yes, sir.

Q. Then she passed you?

A. She didn't pass; before she passed she blew another whistle so I didn't know whether it meant for me or not.

Q. Then, after you had blown one whistle, he blew another whistle; one blast?

A. Yes, sir.

Q. Did you hear any other whistles after that?

A. No, sir; because it was so cold I went inside the pilothouse at the time, but the people told me—

Q. Never mind—

A. Time the boats came together I went out of the pilothouse and saw them come together.

Q. You have just said that you saw this little boat, the Argo, that was coming down the river, run down across the river right after the green light of the Dumois?

A. Yes, sir; I said so and I mean it.

Q. When you were in the pilothouse and you shut up the pilothouse, how did you hear this boat after she passed your boat and was running down the river after this green light?

A. I can just answer what I tell you; I put myself up to the window and looked out and I saw the little boat coming down all the time up to that other boat.

Q. He was running right after the green light?

A. Yes, sir.

Q. Of the Dumois?

A. Yes, sir. He was steering right to that light; that is my knowledge what I saw from my boat.

Q. How far were they below the Day Dream when they came together—how far down the river?

A. I tell you, sir, I don't think it was more than 200 feet altogether from the place I saw them cross here—

Q. Just answer what I ask you; I ask you how far below the Day Dream they were when the boats came together?

A. I can't tell you that because I can't measure the width.

Q. You were there?

A. I was there, but I can't swear to you—

Q. But there are a great many things that you can swear to, why can't you swear to that?

A. I can't swear to a thing that I don't know how many feet; I can't guess it.

Q. You can't even guess it?

A. No, sir.

Q. But you can guess that when you saw the Argo pass you she was right up against you?

A. I do, because I was scared she was coming in to me; I had to look out for myself, for my own life.

Q. How close was he to your bank; he must have been 50 feet?

A. No, sir; he was more than that; 100 may be, more or less.

Q. Right on the east shore?

A. Right in the east shore.

Q. And he blew one whistle to you and you answered with one whistle and then he blew another whistle and started across the river—

A. He didn't cross the river; I keep on telling you the same thing; the boats passed alongside of me and another boat he was coming up, somebody told me, boat coming behind, and I came out and saw the boat coming up and the boat coming up swung right across the river because he was scared of the lights, so many lights; the man could not come on top of me and sink me; he had to go across the river; this boat that was coming up from below and this boat going down, if he had only stopped right alongside of me, he would have everything all right; but he kept on going after this big ship.

Q. He was running right after that big ship?

A. Yes, sir; he run right on top of him just like I would run on top of you right now.

Q. How far away were they from the Day Dream when he ran on top of the other boat?

A. I keep on telling you, about 200 feet, more or less, down below; I can't tell you exactly how—

Q. It was so dark?

A. It was not very dark; I saw the boats; that is all I know. It was a dark night; it was not day.

Q. When they came together they were below the Day Dream?

A. Yes, sir; a good deal.

Q. About how much?

A. About 200 feet, I think, more or less; that is my calculation.

Q. And the Argo had turned off from the eastern shore and was going slantingly across the river right after the green light?

A. He didn't turn right around to the green light; he gradually steered after that light.

Q. He steered off from the green light?

A. He steered right to it.

Q. He must have had his stern towards you?

A. Yes sir, before he struck him.

Q. How do you know that he had his stern towards—

A. I saw the lights of the Argo, on both sides he had his light.

Q. The red and green light?

A. No sir, I didn't see any green light belonging to the Argo.

Q. What lights did you see?

A. The lights of the windows.

Q. What windows?

A. Window in the room, I can't tell what windows they were.

Q. At mid-night?

A. Yes sir, at mid-night.

Q. On a small boat like the Argo?

A. Yes, sir.

Q. You saw the lights in the windows?

A. Yes, sir, and I saw it so long until they sunk down in the water, until they had gone under the water.

Q. But she had no red light or green light?

A. I didn't see it.

Q. I ask yon whether she did or not?

A. I didn't see any, I tell you.

Q. How do you know she was going across the river if you couldn't see her lights?

A. I saw the boat at that time—I saw him going—

Q. It was a dark night?

A. It was pretty dark, but I could see the boat because she was in sight of my eyes.

Q. You say the collision occurred in the middle of the river?

A. Yes, sir, so much I can tell you.

Q. How wide is the river there?

A. I never measured it.

Q. You are a steamboatman, have been a pilot since before the war—I want to know how wide that river is there?

A. If you want to know, I will go down and measure it for you, to get the exact measurements.

Q. I want to know now how wide the river is there?

A. I can't tell you.

Q. How many times have you been there?

A. More than a thousand times.

Q. And you have no idea how wide the river is there?

A. No, sir, because it is not my business to know.

Q. You say this collision occurred about 200 feet away from the Day Dream?

A. I say more or less, I only guess at it.

Q. How much is more and how much is less?

A. I cant tell you.

Q. Well, give us some idea. I want to—

A. All the ideas you get from me is the truth, no use to worry me any more, you want to find the truth, I cant tell you what I dont know.

Q. want to get nothing else except the truth.

A. I only state the truth to all you ask me.

Q. You say this collision occurred about 200 feet away from the Day Dream, more or less?

A. Below the Day Dream.

Q. How far out in the river is it?

A. I told you in the middle of the river so much as I can guess.

Q. I want to know something about feet—how far away to the westward was it of the Day Dream?

A. I can't tell you because I didn't take any measurement, you want a man to tell the truth—

Q. I want the truth—

A. I want to tell you nothing but the truth, if you want me to go and put those boats together and anchor them and hold them then I can measure it.

Q. I want to know how far from the eastern bank in feet this collision occurred.

A. I tell you somewhere in the middle of the river.

Q. I want to find out where the middle of the river is?

A. You go and see it, I haven't got nothing to do with that.

Q. You don't know where the middle of the river is, I want to try and find out?

A. Nobody else knows, except somebody that has gone and measured it.

Q. How far did this collision occur, according to your idea from the eastern bank of the Mississippi river?

A. That is what I tell you sir.

Q. Well, tell it again.

A. I keep on telling you, it was about 250 feet more or less.

By Mr. Grant:

Q. Is that answer correct?

A. Yes sir, below my boat.

By Mr. De Gray:

Q. I will ask you again, how far from the eastern shore of the Mississippi river did this collision occur?

A. I tell you just the same words as I told you before, in about half the river, about half the river in my knowledge.

Q. How wide is the river at this place?

A. I can't tell you.

Q. Is it 100 feet?

A. No sir. it is more than that.

Q. Is it 200 feet?

A. It may be a mile for all I know.

Q. May be it is a mile?

A. Yes sir. because we can't see the people across the river,

I have never been an engineer to measure it and tell you how many feet it was.

Q. Did you ever look at a chart of the river?

A. No sir, I cant read or write, I dont look at the charts, it dont pay me, I have got no time to do that.

Q. If you see 100 feet marked down in writing, you dont know what it is, you cant read it?

A. If I see 100 feet?

Q. If a write down here 100 feet, can you take that and read it and tell us what it is?

A. No, sir.

Q. If I marked down 200 feet, you couldn't tell what that was?

A. As long as I tell you I—

Q. No, no but you could tell at was 200—

A. May be if I see 200 mark I know what that is, 200, because I learned what that is from the greenback.

Q. I want to find out how long is your boat?

A. I told you my boat is 109 feet long.

Q. How many times, the length of your boat, was it, that this collision occurred from the eastern shore?

A. I did'nt put it together, I cant tell you.

Q. I will ask you to put it together?

A. I cant put it together, that is all I know.

Q. And you wont put it together?

A. No sir, I cant, you show me how to do it and may be I do it, sit here and swear to what I know and I don't tell you a thing that I dont know.

Q. And you sit here and swear that there was no green and red light on the Argo?

A. I say I didn't see it and he was alongside of me, he was right under me, I tell you I was scared he was going to run into me, because I didn't know what kind of a boat it was.

Q. He must have been a sort of a wild kind of a man?

A. If you was with me that night you would say he was wild; it was the wildest piece of work I ever saw in my life, and I am 70 years old, I would swear to that, if I die to-morrow; over my very ground I swear I never saw such a run in my life, running that way; if any man saw how he was going to drown his people, they would say the man must be crazy; I told that to the Captain in the Customhouse. He run right on top of the ship that way; why didn't he stop his boat, if you want to hear the truth, Mr. De Gray.

Q. That is what I want to hear, the truth?

A. That is what I am telling you.

Q. It seems to me you know everything but the truth.

A. I know so well as I saw it; what I saw with my eyes I must believe, sir.

Q. You heard no whistles at all?

A. I didn't hear any whistles except two whistles.

Q. The only whistles you ever heard was the two whistles of the Argo?

A. Yes sir.

Q. First when she blew for you?

A. Yes, sir.

Q. And you answered her?

A. Yes, sir.

Q. And then he blew one whistle again?

A. Yes sir.

Q. And you never heard any more from any boat?

A. No, sir; because my engine was making such a noise I couldn't hear; we had steam blowing out, and it was making so much noise I didn't hear anything at all, and I don't swear I heard any. The boat was just getting there at the landing and the steam blow up the pipe so much, making such a noise that I couldn't hear anything, and I won't swear I did hear.

Q. Did you see them when they struck?

A. I saw the boat come there, go into the boat and go up stream and the other boat go across the river.

Q. Who went up stream?

A. Time she struck that would turn her bow up stream.

Q. And the other boat went on across the river?

A. She went on across, stopped and backed down, and the other boat was going up and down all the time, never stopped.

Q. Which boat?

A. The little boat, after it slid around and went up stream, it came around that way and came up stream.

Q. How could you tell that?

A. Because I saw the lights turn around.

Q. What did the big boat do?

A. The big boat go right across the river, then stopped and backed; I don't know whether she backed or not; I know she was dropping down.

Q. What lights did you see on the big boat?

A. I didn't see anything but the headlight and green light. I saw it time it was going across the river; I saw the lights in the cabin.

Q. How did you happen to see the Argo at all if it—

A. I told you, it had lights in the engine room.

Q. Where was the engine room on the boat?

A. I can't tell you anything except I saw the lights.

Q. Did you ever see the Argo?

A. I saw it across the river before it went away from here.

Q. Whereabouts was the engine room on the Argo?

A. I never was aboard of her.

Q. You don't know whether it was on deck or in the hull?

A. No, sir; I can't tell you nothing about that.

Q. How does it happen that you didn't hear any whistles from the Dumois?

A. I keep on telling you that the blowing off kept me from hearing; the boiler was just muggling and I couldn't hear anything at all, I couldn't hear what you said right alongside of me.

Q. How long had she been muggling?

A. Just now at the time it passed us.

Q. Then your boat only muggled when the Argo passed her?

A. I tell you it was blowing off, not muggling.

Q. She didn't muggle before the Argo got there?

A. It was blowing all the time as soon as we stopped and fastened there; as soon as we fastened the line then the steam kept blowing off, making that noise.

Q. That was before the Argo got there?

A. No, sir; we were going to fasten the line just the time the Argo was blowing her whistle.

Q. Then she began to muggle?

A. Then the steam was going at the same time.

Q. I ask you again, how—you are a pilot and have been a pilot so long, you say that you were a pilot before the date of licenses and before the war, and have been continuously ever since, and you are a pilot from New Orleans to the Jetties, as well as up the river?

A. Yes sir.

Q. I ask you—being a pilot of a great number of years, which you have spent on the Mississippi river, how wide the river is at this Canal, or where this collision took place?

A. I don't know any part of the river how wide it is, because I never measured it; I only know the places where I go; if they tell me to go to the New Canal, I go; if they tell me to go to South Pass, I can go, or South West Pass, I go; it is not for a pilot to know how wide the river is.

Q. How wide is the river here at New Orleans?

A. I can't tell you; I never measured it in my life.

Q. Notwithstanding the fact of the length of time you have been a pilot, you can't tell how wide the river is here?

A. No, sir; because they don't give me anything to measure the width.

Q. You don't know anything of the width of the river?

A. No, sir.

Q. You don't know whether it is a quarter of a mile or—
A. No, sir.
Q. You don't know whether it is two miles?
A. It may be five miles.
Q. It may be five miles?
A. Yes, sir.
Q. You don't know whether it is a quarter of a mile or five miles?
A. Yes, sir; I could tell pretty near if I go anywhere, I can say how far I go.
Q. How wide is it at New Orleans; is it one mile wide?
A. Yes, sir.
Q. Is it five miles wide?
A. No, sir; I can't tell you how wide it is.
Q. How wide is it down at the New Canal; is it a quarter of a mile wide?
A. I never measured it; I don't know.
Q. Is it a half mile wide?
A. I never measured it.
Q. Is it five miles wide?
A. No, sir; I don't know how much it is.
Q. Is it ten miles wide?
A. No, sir; I don't know anything about it.
Q. Do you know whether it is ten miles wide or less?
A. I know how much is ten miles to go from one place to another; I can tell you how far down to the New Canal is Fort Jackson; it is four or five miles; I can tell you how far the Jump is from the New Canal; I can't tell you how much it is across.
Q. You can't tell whether it is a quarter of a mile or ten miles wide down below there at the Canal?
A. No, sir, I never measured it.
Q. You have got no idea?
A. No, sir.

DEPOSITION OF T. M. MILLER.

Filed December 16th, 1897.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

Testimony taken in the above entitled and numbered cause

on behalf of Claimant, on the 28th day of April, 1897, before Frank H. Mortimer, U. S. Commissioner.
Appearances:

Rouse & Grant, Proctors for Claimant.
F. De Gray, Proctor for Libelant.

General T. M. Miller, witness sworn on behalf of Claimant, testified as follows:

Direct Examination.

By Mr. Grant:

Q. Are you acquainted with Mr. Oscar M. Springer?

A. Slightly.

Q. Have you had any business relations with him?

A. Very little. I had a claim against that Argo for a Texas firm for a small amount, and I had some correspondence with Mr. Springer, when he asked me not to take any steps, wrote me not to take any steps until he came to New Orleans, which would be very soon; he did come down here during the winter; he came to me and explained that this Texas claim was not against the boat at all, but against some person who had her temporarily, for lumber supplied to him for his own convenience, and my client in Texas recalled the claim, and it was never pressed after that statement. The only other business I ever had with Mr. Springer was some slight attempt at his instance to sell the Argo. I think I told one Biloxi party, Mr. James, that Mr. Springer wanted to sell the Argo, and notified him to come and look at it and see if he couldn't dispose of it to Biloxi parties. I want to say here, that I never mentioned this subject since the loss of the boat.

Q. Did Mr. Springer fix any price as a selling price?

A. My recollection is that he told me, that while the boat cost $40,000 originally and had been recently put in first-class condition, so she was as good as new, that he would be willing to sell her for $12,000.

Q. Would he allow a commission to the seller?

A. I think he said if I could get her sold for that he would allow me either one or two thousand dollars, I don't recollect.

Q. Did you offer her to any parties for that price?

A. As I say, I mentioned it to this Mr. James, I don't remember to have offered it to anybody else or mentioned it to anybody else. It is possible I made some inquiry of Mr. Payne, to know if he wanted this steam yacht; I never saw the yacht

itself and know nothing in the world about it. Mr. Springer disappeared in a day or two and I never saw him again and never had any correspondence with him after that. None of these offers ever materialized. He represented to me that he would be selling the boat at a tremendous sacifice and a man would be getting a bargain whoever bought her.

Q. Can you remember about the date of these transactions?

A. It was about the latter part of November, or some time in December, 1896; I am not sure, however, about the date.

Cross-Examination.

By Mr. De Gray:

Q. Did Mr. Springer ever give you his reasons for wishing to selling the Argo; ever tell you that he was in financial difficulties?

A. He said that his fancy for a steam yacht had departed; that he couldn't handle her, and my impression is, he said he was bound to dispose of her, and he wanted me to push the sale?

Q. He was very anxious then to get rid of her?

A. Yes, sir.

Q. Didn't it leave the impression on your mind that he was in financial difficulties and wanted to sell her accordingly?

A. I can't say; I don't recall any impression I had about that.

Oscar M. Springer :
vs. : No. 13,319.
S. S. Albert Dumois. :

Testimony taken on behalf of Claimant in this cause, on the 2nd day of April, 1897, before F. H. Mortimer, U. S. Commissioner. Filed December 16, 1897.

Appearances:

Rouse & Grant, Proctors for Claimant.

R. De Gray, Proctor for Libelant.

Captain Wm. Lombard, witness, sworn on behalf of Claimant, testified as follows:

Direct Examination.

By Mr. Grant:

Q. What is your business?

A. Pilot.

Q. Have you a pilot's license?

A. Yes, sir; I did have.

Q. Have you got it with you?
A. No, sir.
Q. What has become of it?
A. I have turned them over to the Local Inspectors.
Q. By whom were you licensed as a pilot?
A. By the Local Inspectors.
Q: United States Local Inspectors? At this port?
A. Yes, sir.
Q. How long have you been a pilot?
A. For about 19 years.
Q. In what waters?
A. On the lower Mississippi, between New Orleans and the Head of the Passes.
Q. What class of vessels have you been pilot of during that time?
A. All classes, all Nationalities. Steamers, Tug boats, Towboats.
Q. Were you pilot on board the Albert Dumois at any time?
A. Yes, sir.
Q. How large a vessel is the Dumois?
A. She is a vessel I should judge about 800 ton or 750 ton; 800 ton I guess.
Q. And about how long?
A. Two hundred and ten feet.
Q. Steam or sail?
A. She is a steam vessel.
Q. What is the character of the propelling power?
A. She is supposed to be—
Q. No, no, her propelling power; is she a side wheel or propeller?
A. She is a propeller.
Q. Were you pilot of the Steamship Albert Dumois on the 27th day of January, 1897?
A. Yes, sir.
Q. Do you remember the collision which took place between the Str. Argo and the Dumois?
A. Yes, sir.
Q. On the night of January 27th, 1897?
A. It was not on the night of the 27th. It was on the morning of the 28th.
Q. Who was on duty on the Steamship Albert Dumois before and at the time the lights of the Steamer Argo first appeared?
A. The Master and the second officer, Mr. Sibitzen, were on the bridge together.

Q. Who was at the wheel?

A. There were two men there; one by the name of Larsen and I forget the other man's name.

Q. Was there a look-out?

A. Yes, sir.

Q. Where was he stationed?

A. He was stationed forward, on the fore deck.

Q. What lights were burning that night?

A. We had mast head light and our port and starboard, side lights, red and green light and white light head light.

Q. How were the lights situated?

A. The masthead light was at the masthead and the red and green lights were—the green light was on the starboard side of the bridge and the red light was on the port side of the bridge out board.

Q. What—Do the side lights have any in-board screen?

A. Yes, sir.

Q. How was the in-board screen situated?

A. They were on the outside of the bridge.

Q. How were these lights visible to an approaching vessel?

A. They were very good lights; they could be seen very plainly; they could be seen—well, the side lights could be seen all of three or four miles, and the mast head light could be seen all of five miles.

Q. What was the elevation of the mast head above the red and green lights?

A. It must have been fully 25 feet, I should judge.

Q. Were these lights burning brightly?

A. Yes, sir.

Q. How do you know that?

A. Because I looked at them myself every once in a while and the officer of the deck; that is his business also.

Q. Where was the Albert Dumois at the time you first discovered the lights of the Argo?

A. She was just below the New Canal, a distance—that was—well, a quarter or a half a mile; I couldn't judge very well.

Q. Near which bank?

A. Near the East bank.

Q. That is the right bank coming up?

A. That is the right bank coming up, yes, sir.

Q. What did you observe first, before you gave any signals?

A. A lot of lights ahead at the lugger landing at the New Canal; about the time I saw these lugger lights I also saw the Argo lights.

Q. What lights did you see at the Canal or near the Canal?

A. I saw a lot of bright lights—white lights.

Q. Did you see the side lights and white lights of the Argo?

A. I saw her three lights—the red and the green and the white light.

Q. Did you see her before she passed the luggers, or after?

A. No, sir.

Q. That hardly answers my question.

(The stenographer is asked to read the question, which he does.)

A. About the same time I saw all the lights together.

Q. When you first discovered lights near the Canal, what impression did it make on you?

A. That she was one of the lugger boats, tugboats, making up a tow there.

Q. When did you become convinced that the vessel was descending?

A. Not until after I had blown my two whistles. She answered me with one; then I was convinced she was coming down the river under way.

Q. About where were you when you sounded the two whistles?

A. When I blew my two whistles, well, I was more than a quarter of a mile below the lights; I blew as soon as I saw the Argo's lights.

Q. Did you hear any whistles before you blew?

A. No, sir.

Q. Why did you blow two whistles?

A. Well, because I wanted to let them know I was coming up and also thinking she was coming down close along the bank; I naturally gave her two whistles, I was out—

Q. How far were you from the East Bank when you blew these two whistles?

A. I should judge about a ship's length.

Q. Where were these lights of the luggers at the New Canal at that time?

A. They were right at the New Canal, as near as I could judge.

Q. Did they appear to be dead ahead?

A. After I hauled out they were a little inside. When I first sighted them they were dead ahead.

Q. Why did you haul out at that time?

A. I hauled out to clear the luggers, and also the steamer that was there.

Q. Could you have cleared the luggers without hauling out into the stream?

A. No, sir.

Q. State, as near as you can, what took place from the time you first discovered the lights of the Argo?

A. I blew two whistles, the Argo answered me with one, I then blew two again to let them know that we had starboarded our helm, immediately followed them up with the danger signal and immediately stopped and backed my steamer. It was not—well, I couldn't exactly say what time it was when the Argo—she came around on a port wheel and ran into our bow, our starboard bow, about 15 or 20 feet abaft of the stem, she was still going ahead when she ran into, struck us, then she—we were backing—she drifted a little astern of us. We knew—I could see almost that her stem was knocked in and we heard some people hollering and came to the conclusion that she was damaged considerably, so we threw everything we could get there overboard and lowered our boat—in the meantime, I guess it was from 12 to 15 minutes, when she went down. We lowered our boat, but there was a boat coming from—appeared to me, from the west shore, and I hollered to them—I was on the bridge—I sang out to them and asked them what boat that was, they told me they were from the Yacht, so after they came alongside the ship we had our ladder then down to let them come aboard, and I said are all hands in the boat, they said yes, but after a little closer examination they said one man was missing. After they got up on the ship's deck, they went into the kitchen first, then they came to the conclusion there was two men missing. At that time the crew of the boat didn't think we were to blame, because they remarked to me—

Counsel for Libellant objects to that.

A. —they said, well pilot we know that you are not to blame for this, it is a good thing that we ran into you, because if you had run into us you would have sunk us and we would have blown up.

Q. You say that when you first discovered the three lights of the Argo you were about a ship's length from the East bank of the Mississippi river.

A. Yes, sir.

Q. State whether you saw all three lights of the Argo dead ahead or otherwise?

A. They were dead ahead; if anything a little inside of us.

Q. What interval was there between your first signal of the two blasts of the whistle and the repetition of those signals?

A. The second time I blew my two whistles.

Q. Yes.

A. None at all, very little, I blew two and then gave them the danger signal imediately after the two.

Q. That was hardly the question I asked you—I asked you what interval there was between your signals of two whistles?

A. I didn't understand you, Mr. Grant. I blew two whistles first.

Q. And the Argo answered—

A. With one.

Q. You repeated your whistle?

A. Yes, sir.

Q. What interval was there between the repitition of those two signals?

A. It could not have been five seconds.

Q. You answered the Argo's whistle immediately?

A. Yes, sir; with two and the danger signal.

Q. What interval was there between that and the backing of the Dumois?

A. Just about two seconds at the time I blew my whistles I ran the telegraph to back, stop and back full speed astern.

Q. Did the Argo give any response to your danger signal?

A. No, sir.

Q. From seeing three lights on the Argo at the time you blew your two whistles, can you say where the Argo must have been, or was in the river?

A. She was close to the New Canal, close to the Lugger Landing.

Q. Close to which bank of the river?

A. To the East bank of the river coming up, or east bank of the river, right hand side coming up.

Q. How many points must a vessel meeting another change, in order that one light or the other may disappear?

A. I should judge it would be about four points.

Q. Two vessels meeting head on, or nearly so, would show all three lights to each other?

A. Yes, sir.

Q. And you say either one changed three or four points to the right or left, one of the lights would disappear?

A. Well, I guess that is pretty—I don't exactly understand that—yes, sir; about four points.

Q. If the Argo had been in the middle of the river and the Albert Dumois within one length of the east bank, would all three lights of the Argo have been visible to the look-out on the Dumois?

Counsel for Libellant objects to the question as leading.

A. Not at that distance.

Q. Where is the customary and usual side for an ascending vessel to take in the Mississippi river, between New Orleans and the Jetties?

A. On the right bank coming down; east side coming up.

Q. Why is that course taken?

A. Because there is less current, and especially when the wind is off shore.

Q. Was there any point near the place where this collision occurred where an ascending would take the other side of the river, according to custom and usage?

A. Not right there.

Q. Where is there any such point?

A. It is a little above—below Fort Jackson.

Q. Vessels usually change and go to the west bank after they get up there?

A. Yes, sir; or further down—now right where we were there is a crossing too, but we never cross over when the wind is to the north west until we get close up under the Forts.

Q. Is that fact well known to pilots?

A. Yes, sir.

Q. On which side of the river is it customary and usual for descending vessels to take?

A. They take the middle of the river.

Q. Why is that?

A. Because there is more current there.

Q. Would a pilot ascending the river, at the point where this collision [took place] except to meet a descending vessel on the east bank?

A. No, sir.

Q. What would have been the consequence if you had kept your course at the time and after you blew your two whistles?

A. I would have gone into the luggers above.

Q. Would or would not a pilot on a descending vessel know than an ascending vessel would be compelled to haul out into the river in order to clear the luggers?

A. Yes, sir.

Q. Did you observe, after you blew your signals of two whistles, the first and second time, that either the red or green lights of the Argo disappeared?

A. A little. She showed her red light to me, a very little bit, they didn't change so quickly until she ran into me.

Q. What lights did you observe on the Argo at the time or just before the collision occurred?

A. At the time and just before, her port side light and the bright light.

Q. At what angle, as to the river, was the Dumois at the time the Argo was struck?

A. About, not exactly 45 degrees across the river.

Q. In what part of the river was she then?

A. She was between the middle and the east bank.

Q. At what angle as to vessels, was the Argo at the time she struck the Dumois?

A. About 45 degrees, I should judge, a little more if anything.

Q. Which way did the Argo go after she struck the Dumois?

A. She drifted very slowly along our side, about the time she got under our stern our headway was fully stopped and she was right there within a—well, a ship's length, I suppose, under our stern when she sunk.

Q. Did she have any headway on, did you notice?

A. When she sunk?

Q. Yes.

A. No, sir.

Q. Did you know which way she was pointed?

A. She was pointing a little to the west shore.

Q. Up stream?

A. Yes, sir; up stream.

Q. What time did you signal the engineer to reverse your engines?

A. At the same time, as soon as she crossed my whistle I gave her two, and then I immediately blew the danger signal and reversed the engines.

Q. Do you know whether the engines were reversed?

A. Yes, sir; because the telegraph came back immediately, the answer came back.

Q. Could you tell yourself whether the lever had been reversed?

A. Yes, sir.

Q. To what extent had the head-way of the Dumois been checked at the time the collision occurred?

A. It had almost been checked.

Q. Some of the witnesses have testified that the Dumois continued up stream full speed after the collision—is that true or not?

A. No, sir.

Counsel for Libellant objects to the question.

Q. Did you lower a boat into the water after the collision occurred?

A. Yes, sir.

Q. How long did that boat remain in the water?

A. It remained there until we started ahead, then they hove it up again.

Q. Was that after the people from the Argo had come aboard.

A. Yes, sir; as near as I know, Mr. Grant, because I was on the bridge looking after the ship.

Q. But you say that you did lower a boat into the water?

A. Yes, sir; the boat was lowered.

Q. Was she manned?

A. Yes, sir; the men were in the boat.

Q. Was that immediately after the collision?

A. As soon as we could get the boat into the water.

Q. How long did the Dumois remain in that part of the river for the purpose of affording assistance?

A. Fully an hour and a quarter or more.

Q. What did the officers do during that time?

A. They did everything they possibly could in aiding the men, they made coffee for them and everything like that and gave them liquor to drink, I believe, fixed them up, some of them laid down and some stayed in the kitchen, cabin and dining room.

Q. Did you remain at the request of Captain Brown or did you volunteer?

A. That was my own doings.

Q. Did you have means of forming an opinion as to the length of time which elapsed between the blowing of your first signal and the collision?

A. Not very well, Mr. Grant.

Q. Was it a short time or a long one?

A. It was not a very long time, but there was plenty of time enough to have avoided the collision if the Argo had stopped.

Q. Could you have gone any closer to the east bank than you were at the time you discovered the lights of the Argo?

A. Not much, no sir.

Q. You don't know how many vessels—what vessels were at the landing near the New Canal?

A. No, sir; I do not, there was a towboat there, the Day Dream and some luggers, I don't know how many, there was lots of lights up there.

Q. Were those lights visible for any length of time before you signalled?

A. No, sir. I signalled, well about the time I saw the luggers' lights I guess, I saw the Argo's lights, they were all together they appeared all at once, then I blew my signal.

Q. Did you notice anything peculiar about the manner in which the Argo carried her lights?

A. The peculiarity was this, that her bright light was very little above her two side lights, it didn't appear to me to be

about a foot and a half or two feet at most, the way they appeared to me.

Q. Do you know how high the lights carried by the luggers at the landing were, at that time?

A. They looked to be about six or seven feet above the water, then there were some very low down on the luggers' deck I should judge.

Q. What lights did the luggers usually carry?

A. They have what they call—they don't carry any regular side lights, they flash up a bull's eye, red light and bull's green light, two lights attached, but when they are anchored, laying to, they usually have a bright light.

Q. Did you see the side lights of the Argo before she passed, close to the lugger landing?

A. No, sir.

Q. Could they ordinarily be seen when a descending vessel was near the bank?

Q. They should have been seen, yes sir.

Q. Would they have been seen if the Argo had been in the middle of the river, before they were seen?

A. Yes, sir.

Q. From your knowledge and experience, as a pilot, will you state whether in your opinion, the course you adopted was or was not the proper and usual course of vessels in that situation?

Counsel for libellant objects to that question on the ground that this is a matter for the court to determine and not for the witness.

A. Yes, sir.

Q. Did you observe how near the Argo was when she changed her course after the signals were given?

A. She couldn't have been more than two ship's lengths away from us, I don't think.

Q. Did you have time, after you saw her change her course, to have changed your course so as to have avoided the collision?

A. No, sir.

Q. You are familliar with the navigation of tugs and small vessels like the Argo?

A. Yes, sir:

Q. Will you state whether vessels of that character, answer their helm readily?

A. Very readily, yes sir.

Q. Do they answer it more readily or less readily than a larger vessel.

A. They answer it much quicker than a larger vessel, more readily.

Q. Would the fact that the Argo was running at the rate of 18 or 20 miles an hour, cause her to respond more quickly to her helm?

A. Yes, sir.

Q. What would be the effect on a vessel coming down the river, quartering across the current if her propeller was reversed? Without regard to the fact whether they could stop her or not?

A. It would swing her bow around some, Mr. Grant, some propellers, they act differently, some are what they call left handed propellers and some right. The Cromwell ships, they are made to back differently from other vessels because they land in an eddy down there at the Cathedral, all propellers don't act alike, there are some exceptions.

Q. A vessel coming down quartering the stream, by reversing the wheel would affect it in some way?

A. Yes, sir.

Q. How would a vessel be affected, would she continue her course or straighten out with the current?

A. She would probably sheer ahead some.

Q. Could you tell which way? Would she sheer across the current or down the current, against the current or down the current?

A. She would sheer around across the current.

Q. She would not straighten out with the current?

A. She wouldn't straighten down with the current. You know, Mr. Grant, I say that all steamers don't back alike and don't answer alike, it is pretty hard to say how one vessel will do.

Q. What speed was the Dumois coming up the river, at the time you discovered the lights of the Argo?

A. She must have been coming up about nine knots.

Q. Nine knots over the ground or through the water?

A. I guess she must have been going nine knots over the ground, I guess.

Q. What is her usual speed coming up the river from the Jetties to the City?

A. They claim ten and a half and 11 knots.

Q. Were you running that night, slower or faster than usual?

A. We had not got—I don't suppose they had got a full head of steam on because we had left Quarantine about an hour and a quarter before that, and it takes them some time to get up steam, I don't think we were going more than nine knots at the time.

[Q.] As to the regular current of the river, at what rate did that current run at that time and place?

A. I suppose it must have been about 2 1-2 or 3 miles an hour, three miles I should judge, three miles an hour.

Q. Which way was the wind blowing with reference to the river at that point?

A. It was blowing about North, Northwest.

Q. With reference to the river?

A. It blew a little across, blew down.

Q. But a little towards which bank?

A. Towards the west bank, from the east bank.

Q. Was the river high then?

A. Yes, sir; it was pretty high, it was rising then, too, at the time of course there is always more current when the river is rising.

Q. Within what distance would a vessel of the size of the Argo be able to check, stop her course?

A. I can give you an example, the harbor tugs, they say they do it in 45 degrees, stop and back.

Cross-Examination.

By Mr. De Gray:

Q. Did you have a picture taken of the Dumois after the collision?

A. No, sir.

Q. Don't you know there was one taken, a photograph?

A. No, sir; not that I know of.

Q. How many places was the paint off her side, her starboard side?

A. There was a dent in it.

Q. That is not what I asked you, I asked you about the paint?

A. There was some paint off of her side.

Q. In how many places?

A. As near as I can remember, two.

Q. Were there not more?

A. Not that I remember, sir.

Q. Where were they?

A. It appeared to be about 15 feet abaft her stem on the starboard bow.

Q. Then where was the next one?

A. They were right together, as near as I can remember.

Q. They were right together?

A. Yes, sir.

Q. Have you any remembrances or recollection upon the subject at all?

A. Of the appearance of the ship?

Q. Yes.
A. Yes, sir.
Q. Where was the paint off?
A. Just abaft of the stem on the starboard bow.
Q. Anything else?
A. That is all I noticed, I didn't pay any extraordinary attention to that, the Captain, and mates, officers of the company here looked after that?
Q. You all went out and took a look at it, didn't you?
A. I was on the ship writing out my statement.
A. Didn't you go and look at it?
A. After leaving the ship, yes sir.
Q. How high above the water were these marks?
A. They were about two feet, I should judge.
Q. About two feet above the water?
A. Yes, sir.
Q. What would that indicate to you, that the stem of the Argo was was only two feet above the water line?
A. No, sir; I don't know—she came right into us this way, she came right up. Just let me explain—
Q. How high up and down the side of the boat was this mark that you speak of, how tall was the mark?
A. It was fully four feet up and down.
Q. And where was the second one, how far abaft of the first one?
A. It looked to me to be pretty close to the first one. The one had a dent in it and then there was a kind of a scratch alongside of it. As soon as I had written my statement I took it down to the local inspectors, I went down there, and when I came back to the ship they had the freight out and she [was] much lighter.
Q. Is it not a fact that owing to the coldness of the weather that then prevailed, that the freight was kept in the hold of that ship for several days?
A. Yes, sir.
Q. Then what are you talking about having the freight out?
A. That is a mistake. Well, you see I didn't pay much attention to the place.
Q. Then the ship had not been raised any from the time you left her to the time you got back there?
A. No, sir. I was speaking about after the freight was out, then I had a better look.
Q. There was not any damage done to the Dumois, was there?
A. One or two of the plates was dented.

Q. Did they do anything to her, you saw her several times afterwards?

A. Yes, sir.

Q. What did they do to her?

A. I think it was painted over when she came back, I think she went into the dry dock.

Q. I am talking about after she got here—did you see them put in any ribs?

A. I was not there at the time.

Q. Were any ribs knocked out of her?

A. I think there were, yes sir, I was told so, I don't know.

Q. After the collision did you go back to make any examination to see whether your own ship had been damaged in any way—was any examination made on board of the Dumois?

A. The Captain and the officers made an examination.

Q. What did they report to you?

A. They didn't make any report to me.

Q. What did they say about it?

A. They said that there were a couple of plates bulged in.

Q. That was coming up the river?

A. No, that was just ofter we were landed.

Q. I asked you, after the collision occurred—wouldn't it be most the natural thing in the world to make an examination to see if any damage was done to the Dumois?

A. Yes sir.

Q. Well, was anything, then, done?

A. Yes sir.

Q. What was it?

A. They said there was only a dent made in the bow.

Q. They went down into the bow to examine it?

A. Yes sir, they examined it and said the bow was dented.

Q. And there was no leak at all?

A. No sir, not that I know of.

Q. They said the only damage done was that the bow was dented?

A. Yes sir.

Q. How soon after the collision occurred, was that?

A. That night they put a light over, it was in the night time and you couldn't see much of the dent then, they went down, anyhow, in the forward part of the ship and found she was not making any water.

Q. And reported no damage inside?

A That was what was reported, I think.

Q. You have spoken of two points, three points and four points, what do you mean by a point?

A. Well, a point is about an inch on the surface of the compass, around.

Q. There is another way—that depends on how big your compass is, does it not?

A. Yes sir.

Q. How many degrees are there in a point?

A. I have forgotten that.

Q. How many degrees are there in a circle?

A. 360.

Q. Well, now what part of the entire circle is a point?

A. It is the 32d part of it, I think, there are 32 points to a compass.

Q. Do you know what you are talking about?

A. I know a compass.

Q. You can box a compass?

A. Yes sir.

Q. You know what a point is?

A. Yes sir.

Q. How many degrees are there in a point?

A. I have to give it up.

Q. Then, when you say that you see something at an angle of four points, you don't know how many degrees that is?

A. I know it is about in that direction, 45 degrees, I take a pilot's common way of speaking.

Q. Four points you would take to be 45 degrees?

A. No sir, I didn't say that. I know what four points represents on the compass.

Q. How many degrees would four points be?

A. I guess it would be about—I just admitted that I didn't know how many degrees there was to a point.

Q. So you can't tell?

A. No sir. The mate will be in here shortly—

Q. Mr. Lumbard, are you sure that you blew the first signal?

A. Yes sir.

Q. Did you not admit, in the presence of Mr. Lindaur—do you [know] Mr. Lindaur?

A. I know him now, yes sir, I met him on the ship, he was pointed out to me.

Q. And the colored cook?

A. No sir. I would not know him if I saw him.

Q. Didn't you admit in the presence of those two persons, and in the presence of Captain Brown that the Argo gave you the first signal of one blast?

A. No, sir.

Q. And didn't you further admit that you answered his one blast with two blasts?

A. I blew two whistles first.

Q. No, no, that is not what I asked you. My question is, first, didn't you admit in the presence of those persons that the Argo blew the first signal and it was one blast?

A. I don't remember any conversation I had at all with those gentlemen in regard to the whistles.

Q. Didn't you further admit, in the presence of those persons, that you answered the Argo's blast of one whistle, with two blasts of your whistle?

A. I don't remember having any conversation in regard to whistles with those gentlemen.

Q. The question is not whether you had a conversation with those gentlemen, the question is whether you did not make that admission—didn't you or some one else in their presence that night make that admission?

A. No sir, not that I remember of at all.

Q. You say you lowered a boat—do you mean to say that you put a boat in the river and manned that boat and went in that boat to the assistance of the Argo or crew of the Argo or anybody else?

A. The boat was lowered.

Q. Did anybody ever go from the Dumois in the boat which you say was then lowered, to the Argo or her crew's assistance?

A. The men were getting into the boat when the other boat came alongside of us.

Q. She sunk didn't she, didn't she go out of sight before the small boat came alongside of the steamer?

A. The ship's boat?

Q. Yes.

A. Not that I saw.

Q. Didn't the Argo sink before her yawl boat got alongside of the Dumois?

A. Yes sir, the Argo's boat.

Q. The Argo had sunk before the Argo's yawl boat had got alongside of the Dumois?

A. Yes sir.

Q. And you say the Argo floated how long after the collision?

A. Fully about 12 minutes I should judge, 10 or 12 minutes.

Q. And how soon after the Argo sunk, was it, that the Argo's yawl boat got alongside of the Dumois?

A. I should judge that would be about five or six minutes.

Q. Then it would be 18 or 20 minutes from the time of the

collision, to the time that the Argo's yawl boat got alongside of the Dumois?

A. Yes sir.

Q. And during all that time you never sent a boat out from the Dumois to the rescue of the crew of the Argo, notwithstanding the fact that you saw the Argo sink beneath the water?

A. The boat—I ordered the boat out and the Captain and all hands were getting the boat ready which they lowered, then I had to look after the ship, I was superintending the handling of the ship, the Captain and the officers was there superintending that.

Q. Was there any boat put out away from the side of the Dumois to go to the rescue of anybody from the Argo?

A. None that I know of, that boat was lowered in the water, that is all I know about that.

Q. As far as the boat was lowered in the water, they might as well have put it on the bank, as far as assistance to the crew of the Argo was concerned?

A. We—

Q. Answer my question?

A. That was before. When the vessel struck us we threw over ladders, everything, planks and everything there was on deck, it would take some time to get the boat ready.

Q. Isn't the boat swinging in the davits?

A. Yes sir, but they have the falls and tackles made fast, that has all got—

Q. Isn't it the easiest thing in the world in order to lower a boat in a hurry, by cutting the lashings and swinging it out and letting it down in the water?

A. Yes sir.

Q. How quick could that be done?

A. Sometimes very quickly.

Q. Could it be done in a minute?

A. It can be done pretty quick. It would take some time to get them ready.

Q. Still, notwithstanding the fact that all that could be done in a few minutes, twenty minutes elapsed, yet there was no boat went from the Dumois to the assistance of the crew of the Argo, isn't that a fact?

A. There was no boat left our side that I know of. The other boat was leaving when the skiff from the Argo came alongside.

Q. Did you make any examination afterwards to see if there was anybody floating, struggling in the water?

A. Yes sir.

Q. In person, did you?

A. We drifted right down.

Q. In person did you, I asked you?

A. Did I leave the ship?

Q. Yes.

A. I couldn't leave the ship.

Q. Didn't you go in the Argo's yawl to go and see whether or not there was anybody afloat?

A. No sir.

Q. Did anybody go?

A. I don't know about that, but we were right there where she went down, laid all around there for fully an hour and a quarter, we had thrown over everything that we had on deck.

Q. Did you back down to her?

A. We were right there when she sunk, inside of—

Q. Did you back down, is the question I asked you?

A. For a moment, and then stopped because we were right close to where she was. I don't stay on these vessels, I don't remain on them, after I bring them to town I leave.

Q. I understand all that, but you seem to have been very much on board of this vessel at this particular time?

A. Yes sir.

Q. You saw the Argo's lights, as I undersood you to say, brightly?

A. I saw the Argo's lights, yes sir.

Q. When you swung off from the east bank, what were you swinging off for?

A. To clear the lights ahead of me.

Q. And how close were you to those lights, were you, when you saw them?

A. I must have been a quarter of a mile, a little more.

Q. Were they burning brightly?

A. All the lights that I saw at the lugger landing appeared to be burning brightly.

Q. There was no difficulty about seeing them?

A. No sir.

Q. The night was clear?

A. It was comparatively a clear night.

Q. It was a clear starlight night?

A. Yes sir.

Q. Who saw the lights first, did you see them first?

A. I suppose I did, I always see everything ahead pretty near, right ahead there.

Q. No, I don't ask you for any suppositions, I ask you whether your lookout saw them first, or you saw them first, or who saw them first?

A. I guess I saw them first.

Q. I don't ask you what you guess, I ask you whether you did or not, if you know?

A. Yes sir, I saw them lights.

Q. Did you see them first or were they reported to you?

A. I saw them first and they were also reported to me.

Q. Afterwards?

A. Yes sir, afterwards.

Q. Then you were about a quarter of a mile off?

A. Yes sir.

Q. They were burning brightly?

A. Yes sir.

A. And it was a clear starlight night?

A. It was a comparatively clear night.

Q. What time of the night was it?

A. It was about 25 minutes past 12 o'clock I guess.

Q. You guess?

A. 25 minutes past 12 or half past 12.

Q. Do you know, for certain?

A. I am pretty certain, it was about 25 minutes past 12.

Q. What did you judge by?

A. Because I looked at my watch afterwards.

Q. How late was it then?

A. Then it was about quarter past one, I guess, and I judged it about that time then, the time it took me to go from Quarantine up.

Q. You talk about a boat steering so much easier when she is running fast then when she is running slow. You say she will steer easier when running fast than when she is running slow, doesn't that depend in the Mississippi river, upon which way you are going, up or down stream?

A. They will steer better going down stream than they will coming up stream.

Q. They will steer better?

A. Yes sir, going down stream.

Q. They will answer quicker?

A. I don't say they will answer quicker but they will steer more steady.

Q. That is not what I asked you—which will answer the quickest, a boat going down stream or a boat coming up stream?

A. They will answer about the same, to me

Q. Why, how is it possible that it could be. When you are coming up stream and you turn your rudder, as you are going against the current, you have not only the benefit of your speed but the benefit of the current, to make the ship change the more quickly—isn't that true?

A. But—

Q. Isn't that true?

A. Not always, sir.

Q. Why not?

A. Because sometimes you are up close to the bank and you have got a suction; you can't steer vessels so well then.

Q. I am talking about vessels being in the middle of the stream—now, when will she steer the easier, coming up or going down stream, answer the quickest?

A. Some steamers will answer quicker than others, this ship will steer better coming up stream, the Dumois, if anything.

Q. Isn't it true with every vessel, that when she is going against the current, that she will answer her helm quicker than she will when she is going with the current?

A. I can't answer that question.

Q. Do you know anything about the Argo?

A. No sir, I saw her twice in the river, that is all.

Q. Was she under way when you saw her?

A. She was rounded to at the pilot station the first time I saw her.

Q. When was that?

A. That was, I suppose, a year ago.

Q. Then you don't know anything about her speed or handling qualities or anything else?

A. No sir, nothing, only what I have heard.

Re-Direct Examination.

By Mr. Grant:

Q. Did you just now state that the lookout had reported the lights at the same time you discovered them?

A. Yes sir, about the same time.

Q. How long an interval was there between your discovery and the report of the lookout?

A. They usually say, light ahead, then I say all right, something like that, you give them some answer like that, just the same time.

Q. What I asked you was, what interval was there between your discovering the lights and the report made by the lookout?

A. There was not much of an interval, might be a few seconds.

By Mr. De Gray:

Q. Who was the lookout?

A. One of the sailors, a man by the name of Johnson, I think his name is.

Nicholas Sibitsen, witness sworn on behalf of Claimant, testified as follows:

Direct Examination.

By Mr. Grant:

Q. How old are you?

A. 33 years.

Q. What is your business?

A. I am mate, second mate.

Q. How long have you been mate?

A. I have been mate since 13 years.

Q. Did you serve as a sailor before that?

A. I have been going to sea since I was 15 years old.

Q. Were you on board of the Albert Dumois on the night of the 27th of January last?

A. Yes sir.

Q. In what capacity?

A. I was second mate aboard of her.

Q. What watch were you on that night?

A. I was on the watch from 8 in the morning till 12, first watch.

Q. Where were you when the collision took place between the Dumois and the Argo?

A. I was on the bridge.

Q. With whom?

A. With the pilot.

Q. Did you have occasion to see whether the lights that night were burning brightly, on the Dumois?

A. Yes sir.

Q. How many lights did she carry?

A. Three lights, the side lights and the mast head light.

Q. On which side was the green light?

A. The green light was on the starboard side.

Q. And the red light on the port?

A. Yes sir.

Q. Did the lights have inboard screens, the colored lights?

A. Yes, sir; not a screen exactly, it is just boards at right angles.

Q. These screens were on the inside of each light?

A. Yes sir.

Q. Was there a lookout on board the Dumois?

A. Yes sir.

Counsel for Libellant objects to the question as leading.

Q. Where was the lookout stationed?

A. The lookout was forward.

Q. Where was the Dumois in the river at the time the lights of the Argo were first discovered?

A. She was close to the east bank, very close.

Q. Did the lookout report the lights of the Argo?

Counsel for Libellant makes the same objection.

A. No report of the lights, we saw them ourselves at the same time.

Q. How far was the Dumois from the Argo when you first saw her lights?

A. I should judge about half a mile when we discovered it to be a steamer.

Q. Did you discover any other lights before you saw the lights of the Argo?

A. Yes sir, we saw a good many bright lights ahead and inside, the pilot thought that it was luggers laying in there.

Q. When you first saw the Argo's lights, did you see all three at the same time?

A. Yes sir.

Q. State whether the Argo's lights were dead ahead or nearly so, at the time you discovered them?

A. Yes sir, a little inside of us nearer the bank.

Q. Which vessel blew the first signal and what signal did she blow?

A. The Dumois blew the first signal.

Q. What signals did she blow?

A. She blew two whistles, starboard helm.

Q. Was there any answer?

A. There was an answer of one whistle after that.

Q. What did the Dumois then do?

A. She blew two whistles again and then the danger signal right away.

Q. You say you were standing alongside of the pilot at the time?

A. Yes sir.

Q. Can you state, of your own knowledge, that you did not hear a signal from the Argo before you sounded your signal?

A. No, sir; no signal from the Argo, before we signalled.

Q. Did the Argo answer the danger signals?

A. No sir.

Q. How long was it after the two signals were first blown by the Dumois, that the Argo changed her course?

Counsel for Libellant objects to the question on the ground that he has not said the Argo changed her course.

Q. If she did change her course?

A. I couldn't very well judge, not so long between because she was going such a horrible speed and we were going along first rate. It must have been some couple of minutes, something about that.

Q. What did you see after she changed her course?

A. We saw her red light. She apparently changed her

course. We were going out in the river all the time and she followed us up.

Q. How were you pointed in the river at the time the collision occurred?

[A.] Mostly to the other bank, not quite, about in the middle of the river then.

Q. Where did the Argo strike the Dumois?

A. We found out afterwards, that she struck us about 10 or 12 feet from the stem on the starboard side.

Q. From the stem?

A. Yes sir.

Q. You have been running in the Mississippi river very long?

A. About nine months.

Q. What is the customary course of vessels ascending the Mississippi?

A. Coming up to the city?

Q. Yes.

A. Generally on both banks, they go on both banks, on the eastern and western bank as well.

Q. At different places?

A. If they start on the east bank they can go over on the other side to avoid the current, certainly it depends on the fog whether it is foggy may be on one side and not on the other side.

Cross-Examination.

By Mr. De Gray:

Q. What time did you get into the Jetties?

A. I don't exactly remember the time, it must have been about ten o'clock or something along there.

Q. How far is it from the Jetties up to the place where the collision occurred?

A. It was about ten miles above Quarantine Station.

Q. How long had you been at Quarantine?

A. We were delayed down there a while, I don't think it was very long.

Q. Well, how long?

A. I can't remember exactly.

Q. One day?

A. It was in the evening.

Q. How long, about how many hours?

A. I don't remember exactly—whether it was only long enough for the doctor to come aboard, I can't remember though how long we staid there.

Q. Can you remember when you came into the Jetties?

A. Yes sir.

Q. What time did you come into the Jetties?
A. It must have been about ten o'clock.
Q. In the day time or night time?
A. Night time.
Q. Where were you at 12 o'clock on the day previous—you got in there at 10 o'clock at night—where were you at 12 o'clock the day before?
A. I haven't got the latitude or longitude.
Q. Well, about?
A. I couldn't tell you.
Q. About how many miles off the Jetties?
A. It was ten hours—it must have been about 100 miles or something like that.
Q. How were you—to the eastward or westward of the Jetties?
A. I guess we were coming right.
Q. I know, but what would be your course the way you were coming?
A. To the Jetties?
Q. Yes, this 100 mile point—in what direction would that lie from the mouth of the Jetties?
A. About North, Northwest.
Q. From the Jetties?
A. From where we were to the Jetties.
Q. Yes, that would put you in a southeasterly direction from the Jetties?
A. Yes, sir.
Q. About 100 miles?
A. About that.
Q. How far to the eastward of the Jetties would it be?
A. I couldn't tell you exactly.
Q. Don't you know, you are a navigator?
A. Yes, sir; if I was aboard and had my notes I would soon find it out, I couldn't tell very [well] tell it now.
Q. You would be how many miles to the eastward of the Jetties?
A. I couldn't tell you right now.
Q. How many watches did you have on your ship, how often did you change?
A. Every four hours.
Q. How often did you change your watch on deck?
A. The watch—we changed every four hours, every four hours all through.
Q. When did you begin, at 12 o'clock?
A. Yes, sir.
Q. Then you changed at four o'clock?

A. Yes, sir.
Q. And then at eight o'clock?
A. Yes, sir.
Q. Then when was the next one?
A. Eight and then at 12 again.
Q. You kept that up right along?
A. Yes, sir.
Q. The bell strikes precisely at 12 o'clock?
A. Yes, sir.
Q. And the watch changes right after?
A. Yes, sir.
Q. Who was at the wheel when you first saw these lights that you have spoken of?
A. There was one able seaman.
Q. Tell us who the able seaman was?
A. He was a witness.
Q. Well, do you know his name?
A. No, sir; I don't remember his name.
Q. Was it your watch on deck?
A. Yes, sir.
Q. When did you come on watch?
A. Eight o'clock in the evening.
Q. And you changed at 12?
A. Yes, sir; I didn't change that night at 12 because the mate did not relieve me just exactly at 12.
Q. But the crew changed?
A. They changed a little after 12.
Q. Didn't they change at 12.
A. No, sir; not exactly at 12 that night because they had to make ready some ropes, when they come up to the harbor they generally make ready things.
Q. Do you make ready in the day time or night time?
A. That depends on how far up the river we are.
Q. Do you know the name of this able seaman who was by the wheel?
A. I can't think of his name, but the other one, his name is Ben Larsen.
Q. The one that relieved him was Larsen?
A. Yes, sir.
Q. When did he relieve him?
A. About a quarter after 12. He was by the wheel when the collision occurred.
Q. Who was at the wheel when the signal was blown?
A. This other man he relieved.
Q. Then, I understand you, between the time that you blew

your first signal and the occurence of the collision, you changed the man at the wheel, didn't you?

A. The—

Q. Answer my question. Didn't you change the man at the wheel?

A. I did not.

Q. Between the blowing of the first signal of the Dumois and the occurrence of the collision didn't you change the man at the wheel?

A. No, sir; not between.

Q. Had you not already said that you did?

A. They changed—

Q. Have you not already testified that the man at the wheel was changed between the time that the Dumois blew her first signal and the collision?

A. I said they relieved the wheel about a quarter after 12, or after 12, the collision was not until 20 minutes after 12.

Q. You don't answer my question?

A. I don't understand—

Q. Who was the first man at the wheel, you don't know his name but he was an able seaman?

A. Yes, sir.

Q. He was at the wheel when you first saw the lights?

A. Yes, sir.

Q. And when you blew your signal?

A. Yes, sir.

Q. Who was at the wheel at the time of the collision, the moment of the collision?

A. The wheel was relieved about the same time the first signal was blown.

Q. Yes, bus wasn't there one man at the wheel when the first signal was blown and another man at the wheel at the time the collision occurred?

A. They were changed about the same time as the first signal was blown.

Q. What time did you have on board of your vessel, wasn't it the time that you took at 12 o'clock that day in the Gulf of Mexico?

A. I couldn't tell. We generally regulate our clock by the pilot that comes aboard.

Q. By what?

A. By his watch. He has got the time ashore, therefore his time ought to be correct than ours.

Q. Who was in the chart room when you first saw these lights?

A. I don't think there was anybody in the chart room so far as I know.

Q. Who was on deck?

A. The whole crew were on deck.

Q. The whole crew were on deck?

A. Yes, sir.

Q. At mid-night?

A. Yes, sir.

Q. For what purpose?

A. One watch was relieving the other and then getting these ropes forward, they had all hands on deck, able seaman, I don't mean the fireman.

Q. How much of a crew have you got?

A. 21 all told.

Q. You mean that is the officers and all?

A. Yes, sir.

Q. That is not the firemen's crew?

A. Everything is included.

Q. In 21 people?

A. Yes, sir.

Q. How many officers were there?

A. Two officers and a captain.

Q. And how many seamen are there?

A. Five.

Q. Five seamen?

A. Four and a carpenter.

Q. So in each watch there is one officer and two seamen?

A. Yes, sir.

Q. That means, when the watch is on deck there would be three there?

A. Yes, sir.

Q. The officer and two seamen?

A. Yes, sir.

Q. And one of those seamen would be at the wheel?

A. Yes, sir.

Q. Did you handle the wheel?

A. I didn't handle the wheel.

Q. Didn't you touch the wheel?

A. No, sir. The wheel was hard a starboard.

Q. Who put it hard a starboard?

A. The man who was steersman.

Q. Who was the steersman?

A. This able seaman.

Q. Give me his name?

A. Larsen.

Q. He put it hard a starboard, did he put it hard a starboard before he blew the whistle?

A. Yes, sir; he ordered the helm hard a starboard and blew the whistle at the same time.

Q. Who did?

A. The pilot.

Q. That is, as soon as he discovered these luggers up ahead there?

A. That was as soon as he discovered that this was a steamer coming along.

Q. How close were you to the bank?

A. I disremember, we were about a couple of ship's lengths from the bank.

Q. How long is the ship?

A. About 200 feet.

Q. And this boat, this steamer's lights that you saw, was inside, closer to the bank than you were?

A. Yes, sir.

Q. You say you have been running nine months in the river here?

A. Yes, sir.

Q. Did you ever see a steamer come down stream, not expecting to make a landing, in any such place as you think you saw this steamer in?

A. No. I dare say when they don't expect to make a landing they go in the middle of the river.

Q. If he was expecting to make a landing down at the Jetties, and not until he got to the Jetties, where would the place be for him, where ought he to be.

A. In the middle of the river I should think.

Q. Wasn't he, according to your notions, closer to the east bank than the luggers were?

A. No, he was not, he was outside of the luggers.

Q. The luggers had not made a landing yet, had they, they were turning in there to make a landing, they had not yet got to the bank?

A. They had got pretty close to the bank, closer than him, mostly in the bank.

Q. He was very close to them?

A. Yes, sir.

Q. What was he doing there?

A. I don't know, sir.

Q. What did you imagine he was doing, how did you think he got there, what was he after?

A. I couldn't tell.

Q. When the collision occurred you were crosswise in the river, were you?

A. How is that?

Q. You were heading over to the west bank?

A. Yes, sir.

Q. Whereabouts in the river did the collision occur?

A. It occurred about in the middle of the river.

Q. When you first saw the Argo, was she nearer the east bank than you were?

A. Yes, sir.

Q. How much?

A. I couldn't tell you, she was so far ahead, we only see bright lights mixed up all among the luggers, all we could make of it.

Q. Mixed up with other lights there?

A. Yes, sir.

Q. You couldn't tell anything about her?

A. No, sir; not until we came nearer up and saw the side lights.

Q. How close was it before you could tell what she was?

A. About a half a mile.

Q. Did you talk over between you and the pilot as to what you saw ahead?

A. No, sir.

Q. What did the pilot think it was?

A. He thought it was luggers when he saw the bright lights.

Q. What did you think it was?

A. I thought the same.

Q. You didn't find out the steamer was there until you got pretty well upon her?

A. I should say about a half a mile.

Q. The pilot says it was a quarter of a mile?

A. I don't say for certain but I think it was a half a mile.

Q. You don't know whether it was a half or a quarter of a mile?

A. I couldn't swear to that.

Q. Who discovered this vessel first?

A. We saw it at the same time.

Q. You and the pilot?

A. Yes, sir.

Q. The lookout didn't see it?

A. Yes, sir; he saw it.

Q. After you did?

A. He saw it all the time.

Q. Who saw it first?

A. You couldn't see it all the time—he saw it first?

A. I couldn't tell whether he saw it first—he was coming along the deck—because he saw us looking.

Q. He was coming along the deck, which way was he coming?

A. He was coming aft of the bridge.

Q. Then he had his back towards the bow.

A. He was walking forward and backwards, he never is in one place, the lookout has got to keep moving.

Q. They cross the boat from side to side, did you ever see the lookout placed on the bow of a ship, at any time, turn his back to the bow and walk to the after part of the ship?

A. Many times, it is only a short distance.

Q. How long did the Argo float from the time the collision occurred before she went under?

A. I should think about, so far as I could judge, about ten minutes.

Q. How long was it, from the time of the collision to the time the Argo's yawl boat came alongside of your vessel?

A. It must have been about 20 minutes.

Q. How many boats did you send from the Dumois to the relief of the crew of the Argo?

A. We only lowered one boat.

Q. How many did you send?

A. We didn't send any.

Q. Did you hear them call for assistance?

A. No, sir.

Q. What part of the ship were you on, after the collision occurred?

A. I was getting the boat ready.

Q. You were on her stern?

A. I was on her bridge.

Q. Was the boat at the bridge?

A. Yes, sir.

Q. Why didn't you drop it in the water and get in it with your crew?

A. We did drop it and got a man in it.

Q. When?

A. As soon as we could get the boat in the water.

Q. How long was that after the collision?

A. It must have six or seven minutes.

Q. After you got her in the water six or seven minutes after the collision and she floated and was manned, why didn't you go to the assistance of this crew?

A. That was after we started it took us six or seven minutes to get that boat in the water. I went forward first to see if we had got any damage from the collision, with a lantern.

Q. Did you go down in her hold?

A. No, sir; I hung the lamp on the outside.

Q. What else did you do then, did you go inside, forward?

A. No, sir; there was cargo inside, we couldn't get in there.

Q. You found out she was not damaged?

A. There was only a dent, there was only a dent in her plate.

Q. There was no leak, nothing of that kind?

A. No, sir.

Q. And you did all this before you undertook to lower boat?

A. Yes, sir.

Q. Then you went aft to lower the boat, lowered it and got a man in, but never sent it out from the ship's side?

A. She was going down as soon as we got it in the water?

Q. The Argo was going down?

A. She had disappeared out of sight.

Q. Then why didn't [you] send your boat to the relief of her crew?

A. Then they hollered from the other side there is a boat coming with the crew. We hollored, who are you, they said they were from the boat that was sunk and the pilot said you are all there, they said one was missing.

Q. You didn't start then for the one that was missing?

A. We got orders to leave the boat clear of the water and to back the ship right into the place where this crew said the boat had sunk, so we could search.

Q. How far did you back the ship?

A. We backed her right down.

Q. How far was that?

A. Three or four ships lengths astern of us they backed, and at the same time we were floating down stream with the current too.

Q. The current was running pretty heavy?

A. No, sir; it was not heavy at that time, not so heavy as it is now.

Q. You backed her down three or four ship lengths until you got to the place where this wreckage was?

A. We backed right at once, before we struck, after we blew the danger whistle.

Q. No, no, after the Argo had disappeared, sunk, then you went astern with your vessel, backed her down stream, didn't you, to look and see if there was anybody floating in the water?

A. Yes, sir.

Q. How far did you back her down stream?

A. We backed her pretty close to the place.

Q. You backed her pretty close to where the Argo went down?

A. Yes, sir.

Q. You didn't want to go down too close for fear you might kill somebody with your propeller?

A. I think that was the idea.

Q. How far—how many lengths of the ship did you back her before you got down to the place where the Argo sunk?

A. It couldn't be more than three or four ship lengths.

Q. For how long a time were you backing?

A. I couldn't tell you exactly, because I was not with the telegraph then; I was attending to the boat.

Q. You could tell, though?

A. They were backing and stopping.

Q. Backing and stopping all the time?

A. I suppose they were stopped once after that and backing.

Q. When did they stop first?

A. They stopped as soon as they blew the danger signal.

Q. The ship went ahead—how long was it before she lost her headway?

A. It couldn't be very long.

Q. How long, how many lengths would she go before she lost her headway—you say you stopped her?

A. Yes, sir.

Q. You didn't back her?

A. We stopped and backed her at once.

Q. How far did she go before she stopped her headway?

A. That would depend on the current.

Q. You say there was not much current?

A. Not as much as now.

Q. Well, how far did she go?

A. I couldn't tell you.

Q. You have already said she went on up the river past where the Argo sunk, didn't she, because you had to back down as you have already said to try and find if there was anybody floating in the water. After the collision the Argo was left where [there] by your ship in the river?

A. She was laying this way in the current.

Q. You mean across the current?

A. Yes.

Q. Then she drifted down?

A. Yes, sir; just astern of us.

Q. And if you had stopped your engine and backed, wouldn't you be going down stream too faster than she would with the current?

A. No, sir.

Q. Why not?

A. She was a small, light ship and the current had more power on her.

Q. You have already said that you stopped and backed your ship and lost your headway—you have further said that your ship lay across the current—now, how could the Argo drift faster down stream than you would with both being waterborne?

A. Because our ship didn't stop as soon as the engine was stopped.

Q. Then you went on past the Argo after the collision?

A. Yes, sir; we were going a little ahead yet.

Q. How far above the Argo did you go before you stopped these four or five ship lengths that you have spoken of here?

A. I mean three or four ship lengths. I mean she was astern of us when she disappeared, that is what I mean.

Q. Then you had gotten up stream away from her?

A. I suppose so, she was not stopped.

Q. Didn't she strike your boat right head on, that way?

A. Yes, sir; she struck us in an angle.

Q. What kind of an angle?

A. At a right angle.

Q. That would stop her speed wouldn't it, didn't it stop her speed?

A. I suppose it stopped her a little.

Q. She certainly didn't go ahead while your ship was going past her, your ship was sailing past, across the bow of the Argo, the Argo was certainly not going ahead after the collision?

A. No, apparently not.

Q. She didn't move after the collision, did she?

A. She was drifting astern of us.

Q. She went astern of you?

A. Yes, sir.

Q. You were going under some headway up stream?

A. I suppose she was.

Q. How far out did it go up stream, before the Argo disappeared?

A. About three or four ship lengths, as I said before.

Q. And then you backed down to the point where she disappeared beneath the water?

A. Yes, sir.

Q. Which way was she heading when she went under, could you tell?

A. We saw her green light, it seemed to me she was laying towards the western bank.

Q. She went down just about where the collision occurred in the river only a little further down stream?

A. She was drifted below that.

Q. But she didn't go either to the east or the west bank?

A. I couldn't tell.

Q. You saw her lights?

A. Yes, sir; I saw her green light.

Q. Did that green light that you saw, did it go after the collision, did it pass to the eastward or the westward, or remain in about the same place?

A. As I saw it, it remained in about the same place.

Q. Until it went down?

A. I was busy then with the boat getting that ready.

Q. You saw it when it went down?

A. No, sir; I saw it disappear somehow.

Q. And when it disappeared it was astern of your boat?

A. Yes, sir.

Q. And about in the same place in the river as it was when the collision occurred?

A. It might.

Q. No, no, not what it might, but was it in the same place?

A. I couldn't tell whether she went a little more that way or this way.

Q. You were up there on your ship and saw when the light disappeared, go under? Where was it then?

A. Astern of us.

Q. And in the same place in the river—could you tell that it had drifted down stream?

A. It was in the middle of the river.

Q. Suppose her wreck lies within 400 feet of the western bank, does that indicate to your mind where that collision occurred?

A. I couldn't tell that.

Re-Direct Examination.

By Mr. Grant:

Q. How long was it after the Dumois blew the first signal that the Argo answered?

A. It was not very long; quarter of a minute, I think.

Q. How long was it after that that the Dumois repeated her first signal?

A. Right away.

Q. How long after that were the danger signals blown?

A. We blew the danger signals right at once as we blew the two whistles; we blew the danger on top of it.

Q. When were the engines stopped and reversed?

A. As soon as the danger signal was blown.

Q. Was the order obeyed?
A. The order was obeyed.
Q. Do you know whether the engines had commenced to back before the collision occurred?
A. Yes, sir.
Q. Did the Dumois have any headway on at the time of the collision?
A. When the Argo struck us, yes, sir.
Q. How much?
A. It is hard to tell; I can't tell how much.
Q. How much further did she go after the Argo struck her?
A. I can't say.
Q. Was her speed perceptibly checked—could you tell that her headway was checked?
A. Certainly I could see that.
Q. Who was the Engineer?
A. It is the first engineer; his name is Lund.
Q. Was he on duty that night?
A. Yes, sir.
Q. At the time of the collision?
A. Yes, sir.
By Mr. De Gray:
Q. You were the officer of the deck; you had that ship in charge that night with the pilot?
A. Yes, sir.
Q. Where was the first officer?
A. He was in bed.
Q. And the Captain, where was he?
A. He was just going down about 11 o'clock, down in the cabin in his room.
Q. Did you hear any signals from the Day Dream?
A. No, sir.
Q. None at all?
A. I didn't hear any.
Q. What sort of a whistle did the Argo have; was it a loud whistle?
A. Yes, sir; it was not bad; it was a long whistle.
Q. How far could you hear it on a clear night?
A. I don't know.
Q. How far do you think you could hear it—how far can you hear your own whistle?
A. I don't know how far we could hear it.
Q. Can you hear it a mile?
A. Yes, sir; I guess so.
Q. Two miles?

A. Might.

Q. You were on watch on the bridge?

A. Yes, sir.

Q. And you heard no whistle blown to the Day Dream that

A. No, sir.

Q. And you heard no whistle blown to the Day Dream that the Day Dream answered?

A. No, sir.

Q. How close were you to the luggers and the Day Dream before you starboarded your wheel?

A. I don't know how far we were from the luggers. I should judge from the Argo half a mile.

Q. I asked you about the luggers?

A. I don't know that.

Q. Didn't you blow for the luggers when you struck out in the river?

A. We blew for the Argo.

Q. For the luggers I asked you?

A. No, sir.

Q. Didn't you know that there was a vessel there at the bank of the river ahead of you?

A. I didn't know anything about that, steamer; that is all I can say.

Q. Did you see the other lights?

A. Yes, sir.

Q. What were they?

A. I suppose they were luggers; I couldn't tell.

Q. What did you think then at that time?

A. Luggers.

Q. That they were luggers?

A. Yes, sir.

Q. Were you swinging out for the luggers?

A. No, sir; we were swinging out for the Argo, his side lights.

Q. Would you have had to swing out to pass the luggers?

A. No, sir; I don't think so; might.

Q. How close were you to the luggers when you passed them?

A. We were a couple of ship lengths, I should think.

Q. Did you pass them?

A. We didn't know—we didn't pass them; we came out in the river before that time.

Q. But if you had maintained your course going up the river about two ship lengths from the east bank, would it have been necessary for you to have swung off from the bank into the river to pass the luggers?

A. We were coming up.

Q. You say you were coming up on the east bank?

A. Yes, sir.

Q. About two ship lengths from the shore?

A. Yes, sir.

Q. Was it necessary for you to turn out into the stream to pass the luggers?

A. No, sir; I don't think; that was just the thing for him to be close in the bank.

Q. And the Argo was closer in the bank than the luggers?

A. No, sir.

Q. How far—

A. She was further out than they; nearer us.

Q. Nearer on your line?

A. Yes, sir.

Q. What lights did you see?

A. I saw all of her lights; she was heading right to us.

Q. Are you a navigator?

A. Yes, sir.

Q. Do you know what a point is?

A. Yes, sir.

Q. How many degrees are there in a point?

A. 11¼

Q. Suppose two ships are approaching each other, half a mile distant, and you see all the lights, side lights and the mast head light, doesn't that indicate to you that they are meeting head on?

A. Yes, sir.

Q. Then you saw the Argo approaching you head on?

A. Yes, sir; mostly.

Q. Why do you say mostly?

A. Because head on, that means she was coming right like this, but the way it was she was a little in here this way, and coming out this way, but still we could see all her lights.

Q. You couldn't see anything of the hull?

A. It was a dark night.

Q. All you could see was her lights?

A. Yes, sir.

Q. Those lights, you saw all three?

A. Yes, sir.

Q. That indicated to you that you were coming head and head?

A. Yes, sir.

Q. As I understand you to say, if you hadn't turned out for the Argo there would have been plenty of room for you to have

continued on your course and come right up along the east shore?

A. Not as she was coming against us.

Q. That is not what I asked you. If the Argo had not been there, would there have been plenty of room for you to have kept your course and passed the luggers on your starboard side?

A. Yes, sir; I should think so.

Q. Your ship is 200 feet long?

A. 200 and some odd feet.

Q. And you were about 500 feet from the bank, or 600?

A. 500 I should think.

Q. And these luggers you say were at the bank you thought?

A. Yes, sir.

Q. How many were there, do you know?

A. No, sir.

Q. They are small craft, are they not?

A. Different sizes.

Q. You have seen the luggers here in the river?

A. They are different sizes.

Q. Yes, but none of them are over 50 feet long, are they?

A. I dare say.

Q. Suppose there were two luggers abreast and lying against the bank of the river, how far would they extend out in the river?

A. It depends on how broad they were, how many feet.

Q. Would they be 50 feet?

A. 50 feet, the two of them.

Q. Then, if they occupied 50 feet and your course was 500 feet from the bank, that would give a clear distance for your ship to pass them on her starboard side of 450 feet, wouldn't it?

A. Yes, sir; to pass the luggers, if they were lying close to the bank.

Q. Now, as you saw the luggers there ahead of you as you came up the river, don't you think there was fully 450 feet for you to have passed by them on your starboard side, as you came up, two ship's length?

A. It depends on the water; there was shallow water there.

Q. There is plenty of water right there; it is a steep bank right down.

A. I didn't know that.

Q. But as far as the appearance is concerned there was plenty of room for you to have kept your course and gone right on and passed the luggers on your starboard side?

A. No, sir. I should not think so, by the looks of it; liable to run the ship ashore.

Q. That is not what I asked you. You say the luggers were lying at the bank and you were coming up the river about 500 feet from the bank—now, if you had kept directly on your course up the river, how far would it have been from the side of your ship to the luggers when you were passing the luggers?

A. If we were coming 500 feet from the bank, and there was luggers 50 feet wide, that would leave about 450 feet.

Q. Don't you know there was 450 feet?

A. I said about.

Q. Your judgment was as you stood on the bridge and looked up the river and saw these luggers on the east bank of the river as you came up, that there would have been about 450 feet of space between your ship and the luggers as you went up stream; that is if you had kept your course, kept right up?

A. Yes, sir.

Q. Was there anything said between Captain Brown and Pilot Lumbard when Captain Brown came on board the Dumois?

A. No, I don't know anything about Captain Brown. I didn't speak to him.

Q. Didn't he talk to Lumbard?

A. He was speaking to the pilot, but I didn't hear.

Q. Did he talk to him about how the collision took place?

A. Yes, sir; I know they were talking about that.

By Mr. Grant:

Q. Did you hear what Captain Brown said?

A. No, sir.

DEPOSITION OF T. J. WOODWARD.

Filed Dec. 16, 1897.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

Testimony taken in the above Cause on the 13th Day of May, 1897, on Behalf of Claimant, Before F. H. Mortimer, U. S. Commissioner.

Appearances:
Rouse & Grant, Proctors for Claimant.
R. De Gray, Proctor for Libelant.

Thomas J. Woodward, witness sworn on behalf of Claimants, testified as follows:

Direct Examination.

By Mr. Grant:

Q. Captain, please give your age, residence and occupation?

A. I am 64 years old, I am sure of that, my residence is New Orleans, and occupation, merchant.

Q. What was your occupation before you became a merchant?

A. I was a mariner, ship master.

Q. For how long?

A. About ten years.

Q. Since you became a merchant, have you been dealing in the purchase and selling of steam and sailing vessels?

A. Yes sir; considerably.

Q. What knowledge have you as to the quality and value of vessels?

A. All vessels?

Q. All kinds of vessels?

A. Well, the knowledge of being familiar with the construction and the kind of service that employed for, material built of, age.

Q. Have you owned vessels yourself?

A. Yes, sir; I have owned all kinds of vessels, steam and sailing, ships, schooners, towboats, steamboats, yachts. I have owned steamships.

Q. Did you ever examine the steam yacht Argo?

A. Yes, sir; I did.

Q. When?

A. I think it was the latter part of November last, or the early part of December.

Q. For what purpose did you examine her?

A. That was—there was some gentlemen talking about getting up a club for recreation on the river and asked me to look around and see if I could find a suitable steam craft that would answer the purpose, not too expensive, and I went over to look at the Argo, she laid across the river, opposite Canal street, and I looked at her for that purpose, and made a full examination of her at that time.

Q. For what purpose did she appear to be suitable?

A. Well, she would answer the purpose for what was wanted, she was considered too expensive, so the thing was off.

Q. Was she fitted or suitable for carrying freight?

A. Not for freight, no sir. She had very little freight room or capacity for freight, she was mostly adapted for a pleasure yacht; she was built solely for that purpose, she never was intended for a freight boat.

Q. Did you observe the condition she was in at that time?

A. Yes, sir; oh, yes.

Q. What was it?

A. Her condition was very good at that time, she was a very well kept boat.

Q. Could you tell whether she had been changed from her original construction?

A. The only change that I know of was having a portion of her stern cut off, in order to get her through the locks in the Chicago river.

Q. What effect did that have on her appearance and usefulness?

A. It destroyed her symmetry, marred her appearance somewhat, because they never re-constructed her the same as she was originally. Her stern was cut off square, and just filled in, instead of running her fan tail out as it was built originally.

Q. Does that improve or deteriorate or effect the appearance?

A. Not materially. As regards her running qualities that would not make any difference, the only thing it took that much off of her quarter deck for the purpose of passengers and destroyed the appearance of her quarter deck, changed a round stern and overhanging, to a square stern, otherwise it was no detriment to the boat, the only thing it took off a little bit of space from the quarter deck, destroyed the symmetry of her model somewhat.

Q. What, in your opinion, was a fair value of the vessel at the time you examined her?

A. Captain Brown was in charge and he—

Mr. De Gray: Answer the question and then explain.

A. I have to say that in order to get at it. Captain Brown said that the price asked for the vessel then was $15,000.

Mr. De Gray:

Counsel for libelant objects to the answer of the witness, because it is not responsive to the question put, and on the further ground that the asking price has got nothing to do in fixing the value. That a man may be willing to sell a thing while he is in distress for ten per cent. of its value, still that ten per cent. would not fix the real value.

Mr. De Gray: Now answer the question precisely as it was propounded.

A. I would say about $8500. That is, taking and putting her alongside of other craft that we have bought and sold, and superior to her in every way, speed, power and carrying capacity and all, I wouldn't dare to offer $10,000 for her at that time as I told the Captain—

Counsel for Libelant objects to this as irrelevant.

A. You don't want anything in regard to my talk with the Captain?

Mr. De Gray: I don't propose to control you in any way, or direct you how to give your evidence.

A. That is all right, I can give you comparisons of vessels right here that he bought and sold, with the Argo.

Q. Please give us comparisons between the Argo and other vessels?

A. The Argo and the Day Dream. The Day Dream was sold to the government for $8500, it is superior to that boat, in power, speed and capacity.

Q. When did you sell the Day Dream to the Government?

A. We sold her some few years ago. She was—what is his name's yacht, of New York, she has been re-converted into a towboat since, but she was a schooner yacht at that time, beautifully fitted up with all fine sleeping car berths, fine nickle plate guard rails all round, ladies' cabin, fine hair mattresses you know. And this other boat that we bought here, steamer on the river here, we sold her here, bought her for $3600, we sold her for $8,000.

Mr. De Gray: You had better give her name.

A. She cost $32,000 one year before we bought her for $3600, and we sold her for $8,000.

Q. When did this transaction take place?

A. It took place some few years ago, ten years ago.

Q. To what extent does the value of steam vessels depreciate by age?

Counsel for Libellant objects to the testimony as irrelevant.

A. A great deal depends on the service you know—from 5% to 10% is the usual depreciation according to service, some vessels depreciate 10% and some 5%, according to their build and service.

Cross-Examination.

By Mr. De Gray:

Q. I would like to have the name of this 32000 dollar yacht?

A. I will think of it in a minute, she was not yacht, she was a steamer.

Q. What kind of a steamer?

Q. Steamboat, she went down to Central America and came back here and was sold by the United States Marshal.

Q. Was it the Corozal?

A. Yes sir, the Corozal.

Q. She is a common stern wheel steamboat, and was sold as a cattle boat, is that the same.

A. No, no; that boat cost $32,000 when she left New Orleans, the year before.

Q. How do you know it cost that?

A. Because we fitted her out and knew what her bills were.

Q. What is she used here now for.

A. For transporting cattle.

Q. From the Texas & Pacific wharf down to the Slaughter House?

A. The very same.

Q. She is a common stern wheel western river steamboat?

A. No sir, she was built specially to go down to Central America.

Q. She couldn't go on the ocean by herself?

A. Yes sir, she could.

Q. She was a high pressure boat?

A. She was a low pressure boat and she left here to go down to Central America to run in the rivers around there for some fruit company.

Q. They didn't run her.

A. She came back here again.

Q. She is the same boat built by Pillsbury?

A. Yes sir.

Q. Was she any finer in construction or in purpose of employment in any way like the Argo?

A. No, no.

Q. Would the price that she would bring or the purpose for which she could be used in any way furnish a criterion for fixing the value of the Argo?

A. Yes sir.

Q. Why?

A. A steamboat in the City of New Orleans is only just worth what she will bring, that is all; a yacht or steamboat or anything else is worth, when she is on the market for sale, is worth what she brings, that is all the way you really fix the value. I only put the value of that boat for what I thought the price would be, if ab oat was put on the market for sale, she might have brought $8500, I wouldn't have offered any more for her. I don't say that fixes the value of the boat, in my estimation that is the value of the boat, I am a judge of steam craft thrown on this market here, I am judge as far as my money goes for any kind of a craft.

Q. How long is the Corozal?

A. I think the Corozal is 130 feet, 125 or 130 feet long.

Q. And how wide?

A. I suppose about 32 feet.

Q. Is she a propeller?

A. No, stern wheeler.

Q. She is a common type of the Western river small stern wheel boats?

A. Not exactly that, her hull you know was built expressly to make this sea voyage.

Q. I am talking about the type and style.

A. She is a little different, because she didn't have those wide guards; she had very narrow guards, just sponsons guards to go with.

Q. She has got two tall smoke-stacks?

A. No, only one.

Q. What sort of a cabin has she got?

A. I don't know, she has about the same cabin as the Western river boats have.

Q. That you find on the Red river boats, for instance?

A. Yes sir, I think so. I don't know as I was ever in her cabin.

Q. Did she have any Pullman bunks and hair mattresses and things of that kind?

A. No.

Q. In other words she is a cattle ferryboat?

A. They use her for a cattle boat.

Q. Then I understand you to say that the cattle ferryboat that the sale of a ferryboat and the price that she would bring would be a fair criterion to fix the value of Herreshof built steam pleasure yacht, do you mean to say that?

A. I mean to illustrate that a steam craft or any other craft that is thrown on the market in New Orleans is worth just what she will bring and she is not worth any more.

Q. We are not talking in this case about a vessel thrown on the market, we are talking about what a vessel ought to bring in the hands of a man that is capable of holding her until he finds a suitable purchaser.

A. That boat was on the market some time here at $15,000.

Q. She was not thrown on the market?

A. No, sir; she was not put up at public auction.

Q. Suppose I show you that the day before she was actually lost that a bargain had been concluded for her sale at $15,000, would you say that that was the value of the boat on that day or was not?

A. That would fix the value, I suppose, if you can produce that.

Q. You have talked of the yacht Day Dream. When you sold the yacht Day Dream who owned her?

A. Woodward, Wight & Co.

Q. Who did they buy her from?

A. Woodward, Wight & Co.

Q. I say who did they buy her from?

A. They bought her from the United States Marshal.

Q. And where had she been prior to that?

A. She had been running the mail between Tampa and Key West.

Q. Who built her?

A. William H. Aspinwall had her built, Webb, I think, was the builder.

Q. Where had she been running prior to the time Woodward, Wight & Company bought her?

A. Between Tampa and Key West.

Q. Yes, but before Woodward, Wight & Company bought her?

A. She came from Tampa, here, and was tied up and sold by the United States Marshal.

Q. She had been running on the lake as a pleasure boat, run by the name of a man named Lawrence who was engineer of the Jackson Ferry?

A. No, that was after the Government was done with her and sold her. The Government brought her from out over here in the Lake, then she was afterwards in the service of the Board of Health, to the best of my knowledge, and she was old then —she was going all around to different places after that.

Q. When she was sold for $8,000 was that a sale that took place at auction?

A. No sir.

Q. Who sold her?

A. We did.

Q. Who sold her to you?

A. We bought her from the United States Marshal.

Q. And sold her for $8,000. What was her construction, wood or iron?

A. She was an iron hull and wooden sheathing, what they call composite built.

Q. What kind of hull did the Argo have?

A. I think she had the same, if I mistake not I think she had the same, iron frame [and] wooden sheathing.

Q. Suppose she had a steel frame with a white oak hull two inches thick selected, and put in there two years ago, and that she had in addition to that entirely new deck beams and a deck put on her that cost over $10,000 alone—would that change your idea of her value?

A. No, I don't think that would change it much.

Q. You have spoken of her stern being cut off, did you see it cut off?

A. I saw where it was cut off.

Q. That is not what I asked you, I asked you did you see it cut off?

A. No sir.

Q. Did you see her before it was cut off?

A. No sir.

Q. Then I ask you how you know it was cut off?

A. The Captain told me, I asked him—

Q. We are not taking down any hearsay testimony, we are asking what you know of your own personal knowledge.

Mr. Grant: Answer the question in your own way.

A. I know it has been cut off.

Q. I ask you how you know it has been cut off?

A. I know, I am satisfied nobody would build a boat and leave that kind of a stern with that kind of a bow and I asked Captain Brown how it was.

Q. I am not asking you what you asked Captain Brown?

Mr. Grant: Answer the question.

A. Answer it his way?

Mr. Grant: Answer it your own way.

Mr. De Gray: He has already answered it.

A. Not as you want me to.

Q. You had not seen her before it was built?

A. No sir.

Q. Do you know of your own knowledge how she came from Chicago to New Orleans?

A. She came down—

Q. Of your own knowledge I ask you?

A. There is no other way—

Q. That is not the question?

A. My knowledge teaches me there is no other way to bring her down except to bring her that way through the locks of the Chicago river.

Q. How long are those locks?

A. They are not long enough—

Q. That is not what I asked you, I want to know of your own knowledge, do you know how long they were?

A. No, sir.

Q. You say and stick to it that she was cut off—how much was it cut off?

A. I was told ten feet.

Q. That is not what I asked you, what you were told, I asked—

A. I am answering to the best of my knowledge.

Q. What a man told you is that your knowledge?

A. That is all the knowledge I have of it of course.

Q. You don't know anything about her construction until you saw her here, or the shape of her stern?

A. No sir.

Q. According to this opinion of yours in which you say there was ten feet cut off—was that ten feet that was cut off anything more than the overhang or projection, pigeon tail, as it were of the boat?

A. I presume that was about all there was cut, as far as I understood.

Q. Did that boat have a square stern—you said she had been cut off square and filled in, did you not?

A. Yes sir, she was cut right down square.

Q. And filled in?

A. Yes sir, just built right in.

Q. How wide was this fan tail part that you speak of?

A. How far did it extend out?

A. [Q.] How wide would it be where it was cut off, from one side to the other?

A. It would be 12 or 15 feet, according to the width of her stern.

Q. Suppose she was 15 feet beam, how wide would this thing have been at the stern?

A. It would cut in there possible—considerable.

Q. Considerable is a very indefinite quantity.

A. Say 12 feet. Some carry the width of the fan tail well aft on account of room on deck, others cut them in.

Q. In reference to this boat you don't know what it was or how it was. How wide would that stern be at the extreme point or end of the projecting pigeon tail?

A. That is the way her stern shows now you know. (Witness draws a picture on an old scrap of paper.)

A. She had a stern there—

Q. Give him a piece of paper.

(Stenographer gives the witness a piece of paper.)

A. (Witness draws several diagrams.) That is about the way she would set in the water.

Q. This is one here marked "A," would represent the deck on the stern before the Fan tail was cut off?

A. Yes sir.

Q. And "B" would represent the side view?

A. Yes sir.

Q. And the little point marked "C" would represent the part which I imagine was cut off?

A. Yes sir.

Q. Now, the cutting off of the point "C" what effect would

that have upon the speed or value or selling capacity of the Argo?

A. It would not have any on her speed qualities as a sea boat.

Q. Or river boat?

A. She might be running and spill a little over that square stern sticking up, instead of having a fan tail to break a sea.

Q. In the first place she was a sea craft?

A. Oh, yes sir, she was a sea-going boat.

Q. Was she?

A. Yes sir, she was fit to go anywhere, I would go anywhere in her.

Q. Did you ever see her license?

A. No sir.

Q. Suppose I were to tell you she was prohibited from going to sea by her license, would that change your view any?

A. No sir. The only thing I say she could go to sea if she took out a license.

Q. I show you a picture of the Argo taken a short time before she was lost and I will ask you if you can point out on this picture the square stern of which you have been speaking?

A. Yes sir, there it is, don't you see where it is cut off?

A. No, I don't see anything cut off. It may have been that way, might it not, might it not have been originally built that way?

A. ——

Q. Might it not have been originally built that way—answer the question?

A. I don't think it would.

Q. Why not?

A. Because there is no symmetry about the boat with cutting her stern off like that.

Q. You mean, by cutting her stern, by cutting the fan tail off?

A. That is all, cutting the overhang.

Q. You don't mean to intimate that anything was cut off that would effect her water line?

A. Not at all, it had no bearing on that at all, in regard to speed, the only thing was in regard to appearance and accommodation on the quarter deck.

Q. Suppose she was 100 feet long, wouldn't she have sufficient accommodation on deck without this little piece of fan tail which you say was cut off?

A. She is allowed so many people, according to her dimensions, whatever she has there, I don't suppose that would cut any figure in it at all.

Q. How much would she be allowed, a vessel of this kind?

A. How many people?

Q. Yes?

A. I suppose that vessel would be allowed to carry 100 people, at least, excursions 125 or 150, special excursion.

Q. Now, there is a boat lying just ahead of this one on this picture, just ahead of the pilot house of the Argo, what is that?

A. That is a Ferryboat.

Q. That looks something like this boat, the Corozal which you compared and have compared with the Argo, does not not?

A. I don't compare it with the Argo.

Q. You have made the comparison as to value?

A. Yes sir, but not otherwise.

Q. I say in appearance she looks the same.

Q. No, no, I don't compare in appearance at all. No, I hope I am not such a poor judge as that. I am only saying in regard to the value.

Re-Direct Examination.

By Mr. Grant:

Q. How fast a boat was the Day Dream?

A. She would run from light to light, 18 miles an hour, on the coast, they took her out and tried her, the Government did, they had their own experts and tried her, they took charge of her, we didn't have anything to do with it, we turned the boat over to them, they came and took her off for a week, they fitted her up and took her for a week and when they came back they said they would take her, they had their own experts, pilots and all, we had nothing to [do] with that, they manipulated her themselves. She was in fine order, everything was cleaned up from top to bottom, she was just off the dock. She wouldn't do it ordinarily, but her boilers were all new, in fine condition, her engines were all over-hauled and everything was in fine condition, she was just got up for that special trial you know—put in order, to sell her.

By Mr. De Gray:

Q. After she had been working a couple of months, she would not have made 15 miles?

A. She was about a 15-knot boat, ordinary speed, at that time you know they were not up to the Herreshofs.

Q. She was not equal to a Herreshoff boat?

A. No sir.

Q. How much steam was the Day Dream allowed to carry?

A. I guess about 75 pounds, she was low pressure you know.

Q. What kind of engines did she have, did the Day Dream have?

A. She har compound engines, surface condenser.

Q. What kind of boiler did she have?

A. She had a regular marine, it was called then a regular marine boiler, square tubular.

Q. If I tell you that the Argo was allowed to carry 124 pounds of steam, by her last test which was made in January before she was lost and that she was capable of making 21 knots easily, would that change [your] judgment as to the value of the boat?

A. I don't know at it would materially.

Q. Then, neither the pressure that she was allowed nor the speed that she was capable of making—

Q. [A.] She was high pressure, remember.

Q. Would be an element that would enter into consideration of her value?

A. Not particularly, because she was a high pressure boat, there is a difference between low and high pressure.

Q. You say she was high pressure, how do you know that?

A. She carried 125 pounds, I know she was high pressure.

Q. Suppose she had been tested up to 185?

A. That might be, she might be tested to 150, that is as high as they go.

Q. You say you could go anywhere with her, across the ocean?

A. Yes sir.

Q. You can't go across the ocean with a high pressure boat?

A. Yes sir. I say the boat was capable of going out to sea by putting in a surface condenser?

Q. Do you know whether she had a surface condenser?

A. Did she have a surface condenser?

Q. Do you know?

A. No sir. That don't prohibit her from being a seaboat. I would take her and go anywhere with her, she was just as good a sea boat as the Day Dream.

Q. You, as a man that has had experience with vessels, etc., don't you know that at the time, where she is allowed to go and what she is allowed to do at a particular time, depends exclusively upon the particular license that she has got from the Custom-house authorities, does it not?

A. Yes sir.

Q. And a great deal of her outfit and her trimming and lights would depend upon her license, would they not?

A. Yes sir, of course she would be equipped for the service she would have a license for.

Q. We will take a vessel that has a license for the river, lakes and inland waters, would she carry a mast head light, that was —under the rules, that would be required to be seen at a distance of five miles?

Q. [A.] They are required to carry a head light.

Q. An ocean-going steamer, where does she have to have her lights?

A. So far above her deck.

Q. How far?

A. I couldn't tell you.

Q. Would there be any reason for aboat that was navigating up and down the Mississippi river, to carrv a mast head light, that could be seen a distance of five miles, be visible for five miles in a clear night?

A. I couldn't say in regard to that.

Q. How much of the Mississippi river could a vessel's light be visible at five miles, cover, I mean over how much of the Mississippi river's length, with its crookedness, etc., could a five-mile light be of any value?

A. If she was at the head of a reach? Well, she ought to have her head light, it ought to show five miles.

Q. It ought to show?

A. Yes sir.

Q. Do you mean she ought to have, if she was licensed for running in the river that should carry a mast head light visble five miles?

A. I say in a clear night a light such as she was required to carry might be visible five miles.

Q. That would depend how high she would carry it, would it not?

A. Usually those boats—a good many boats carry a light on the night head they don't carry them aloft at all. The night head is the stem piece of ships, and a great many of them carry their light up there.

Q. You mean the stem piece of the bow?

A. The extension of the stem projecting up, on those fine boats.

Q. How high would that light be above the water?

A. That all depends on the heighth of the free board of the vessel above the water, sometimes they have them extended up and they carry the light on top of it, on the stem extended above the bulwarks. But the boats running up and down below the city all used to carry their lights pretty well up there.

Q. Suppose the light was carried up on the forward part of pilot house, would not that be a sufficient heighth overhead?

A. That would seem to be for a small boat.

Q. Like this (referring to the Argo)?

A. Yes sir.

Q. How far would a light carried on the front part of the pilot house be visible in a clear night?

A. I would say, if it was eight-inch, you could see that five miles, clear weather, perhaps not so far, there is always more or less mist on the river at night time.

Q. But taking from the water line, as you see here, to the top of the pilot house, forward part of the pilot house, that would be a sufficient elevation for a boat of this size, to carry its light?

A. It would seem to be fairly so, but if she carried her other lights on the pilothouse there might be a little confusion, all three lights on the same level.

Q. Suppose the forward one on the forward part of the pilothouse was higher than the side lights, wouldn't that distitinguish them?

A. That would do to a certain extent although it would bring the three lights all—if you came head on, it might be confusing, the mast head light ought to be lifted above the side lights. I couldn't tell you in regard to the regulations that are on the river now, inland waters.

Q. Isn't all that regulated, the lights and where they should be, by the Inspectors?

Q. [A.] I believe they are, according to the size of the vessel.

Q. By the inspection, at the time the inspection is made?

A. No, they are governed by the rules, the rules of the road. I don't know that the inspection—

Q. But don't the Inspectors when they inspect the boat also examine the place which is designated by the Board of the location for the lights?

A. I presume they do, that I couldn't say positively.

Q. After all, is it not, under the rule, the red and the green light, the two lights that designate whether the boats are crossing or whether they are meeting head on or how they are coming together?

A. Yes sir, you can regulate yourself according to that, by the lights you see.

Q. Without reference to any white light at all?

A. Yes sir.

Q. Don't you know, that is a fact, that it is a provision of the rules, that the red and green light are the only lights that are to control the pilots in the manipulation of their boats?

A. For sail vessels?

Q. No, no, I am talking about steam vessels on the rivers?
A. In regard to the rules of the road, you are governed by—
Q. By the colors of the lights?
A. By the colors of the lights. The white mast head light indicates steam vessels, sailing vessels are not obliged to carry a white light, only the red and green light.
Q. Are small boats, boats of this class, (referring to the Argo) on the rivers and lakes, are they required to cary a mast head light or white light at all?
A. They are all required to carry what we call a mast head light.
Q. I am asking in refrence to the rules, are they, under the rules required—
A. Under the rules—
Q. To carry a white light?
A. Yes sir.
Q. For steam?
Yes sir.

TESTIMONY OF JOHANNES LUND AND BERNT LARSEN.

Filed December 16, 1897.

Oscar M. Springer :
vs. : No. 13,319.
S. S. "Albert Dumois." :

Testimony taken in the above entitled and numbered cause before Frank H. Mortimer, U. S. Commissioner, on behalf of Claimant, on the 29th day of April, 1897.

Appearances:
Rouse & Grant, Proctors for Claimant; R. DeGray, Proctor for Libelant.

A. E. Uglnad, sworn in as Interpreter.

Johannes Lund, witness sworn on behalf of Claimants, testified as follows:

Direct Examination.

By Mr. Grant:
Q. Were you on board of Albert Dumois on the morning of the 28th of January, 1897?

A. Yes sir.
Q. In what capacity?
A. Chief Engineer.
Q. How long had you been Chief Engineer?
A. On board the Albert Dumois or altogether?
Q. On board—Altogether.
A. 15, 16 years.
Q. How long on the Albert Dumois?
A. Now, it is two years and two months.
Q. Do you remember the collision between the Albert Dumois and the Argo on the night of the 27th, or morning of the 28th of January, 1897?
A. Yes sir.
Q. Where were you and what were you doing before the collision?
A. I had watch in the engineer's room.
Q. How long had you been on watch?
A. I had watch from 8 to 12 and the 3rd engineer was going to come to relieve me and I was down there about an hour after my time.
Q. Did you hear any signals pass between the Dumois and the Argo?
A. I heard the Dumois signal.
Q. What signal did she give?
A. The signals I can't so exactly give, I don't exactly pay attention to how many whistles are blown.
Q. Did you hear any whistles from another vessel before the Dumois gave her signal?
A. No sir.
Q. Were the engines and machinery of the Dumois all working well?
A. Yes, sir.
Q. Did you receive any bells to stop and reverse the engines?
A. Yes, sir.
Q. When did you receive those signals?
A. I can't so exactly say, but about the same time as the collision there was a telegraph down to stop and reverse full speed.
Q. How long had the engines been reversed when you felt the shock of the collision?
A. I can't so exactly say; I didn't look at the clock at the time.
Q. State your opinion to the best of your belief in regard to the time?
A. About 15 minutes.
Q. Do you mean minutes or seconds?

A. I mean minutes.

Q. Did you, or not, promptly reverse the engines when you received the signal bells?

Counsel objects on the ground that the question is leading.

A. It was done as quick as I could back it.

Q. What time, if any, elapsed between receiving the bells to reverse and back and the actual reversing and backing in response?

A. A couple of seconds or so about.

Q. Were the engines backing at the time the shock of the collision occurred?

Counsel for Libelant objects to the question as leading.

A. The engines were backing at that time.

Q. State whether the headway of the vessel had been checked by this backing before this shock of the collision was felt by you?

Counsed for Libelant objects to the question because in the very condition of things it is apparent that this witness couldn't know whether from the position that he was, whether the headway of the vessel had been lost or stopped, or not.

A. The engines stop the vessel the very minute the engine is reversed. The headway of the ship is stopped at once as quick as we reverse the engine.

Q. To what extent was the headway stopped before the collision?

A. I think the headway was entirely stopped; it is not so good for me to state—rather difficult for me to state.

By Mr. De Gray:

Q. To state whether it was stopped or not?

A. To state whether the headway was stopped or not.

By Mr. Grant:

Q. Do you know in what part of the river the vessel was at the time of the collision?

A. No, I can't say; I am not acquainted with the river, neither was I up on deck.

By Mr. De Gray:

Q. In what part of the Albert Dumois is the engine room?

A. About midships.

Q. Is it below the main deck?

A. Yes, sir.

Q. How far down?

A. I don't know exactly.

Q. How many stairs did you go down to get into the engine room?

A. Only one step.

Q. How many feet is the place where you stand to work the throttle of the engine, below the main deck of the ship?

A. Ten or twelve feet, I think; I can't exactly say.

Q. Then you couldn't see or know what was going on [on] deck of the ship?

A. No, sir; not before I was told.

Q. Did you, of your own knowledge, not what anybody told you, but of your own knowledge, do you know whether the ship had lost her headway before the collision occurred?

A. I don't know; no more than there was a telegraph to reverse the engines.

Q. You reversed the engine?

A. Yes, sir.

Q. But when you reversed the engine you didn't know how soon the ship lost her headway?

A. No, sir; I can't know that, because I didn't see it.

Q. From where you were down in the hold, engine room, of the boat, you couldn't tell what whistles were blown upon the other boat, could you?

A. No, sir.

Q. You don't know anything about it?

A. Nothing else but what I was told.

Q. Then, of your own knowledge, you don't know anything about any signals that were blown by the other boat?

A. No, sir.

Q. How long did you remain in the engine room after the collision?

A. I remained in the engine room about two and a half hours, until we were full speed again.

Q. What were you doing when you were in the engine room during those two hours and a half, with the machinery?

A. I couldn't leave the engine as long as they were lying there stopped; I had to remain there.

Q. Did the engine move for two hours and a half—was the engine out of use for two hours and a half?

A. I can't remember so exactly how it was, but likely the engine had to be moved, as it was impossible to remain lying there stopped in that strong current.

Q. Then, you don't know whether, as a matter of fact, it was actually started ahead or backed—you don't remember during those two hours and a half, you have no positive knowledge of it, that it was used or not used?

A. That it was stopped, of course, is clear, as after the engine had been backed full speed astern it was stopped again.

Q. That is all you recollect until it was started ahead?

A. I can't remember the intermediate—

Q. Operations, or whether they were any?
A. I can't so surely remember.
Q. What time of night was it?
A. Between 12 and 3.
Q. At what time did you go on watch?
A. Eight o'clock that night.
Q. How long was your watch?
A. Until 12.
Q. How did it happen that you continued on watch after 12 o'clock?
A. I can't so exactly say, but the one who was going to relieve me was not so exact on his time in relieving me.
Q. Is it possible that the discipline of this ship is so lax that the watches will vary as much as from two and a half to three hours?
A. No; the discipline is not lax; but when the collision happened I had to remain there anyhow; I couldn't leave the engine.
Q. Did you not have to remain there because nobody came to relieve you?
A. No, the one that was going to relieve me came right after the collision, but then I couldn't leave.
Q. What was your position on the boat?
A. Chief engineer.
Q. After the collision did you make any effort to find out whether your own boat was injured?
A. What is that?
Q. Was there any effort made on the Dumois to find out whether the Dumois was injured?
A. I don't know: I was not on deck.
Q. Whereabouts did the Argo strike the Dumois?
A. When we came up here on the wharf so we could see exactly, we found that it had touched on the bow. (Witness makes a certain motion with his hand.)
Q. Do you mean it struck at right angles?
A. Yes, sir; that is the way the marks of the blow showed on the Dumois.
Q. The Dumois was not injured any was she?
A. The plates were bent and the rivets were busted.
Q. Was the paint knocked off?
A. Yes, sir.
Q. Look at this picture, and see if that is a correct view—if that the way it looked to you?
(Counsel shows witness a certain picture.)
This is the forward part of the Dumois; see whether these marks down here are correctly shown on that picture?
A. Yes, sir; it showed right in that way.

Counsel for Libelant offers in evidence sketch marked "A." (Same is sent up in original.)

Q. How many new rivets did you have to put into those plates—first, did you have to put any new rivets into the hull of the Dumois where the heads had been knocked off?

A. Yes, sir.

Q. How many?

A. I don't know how many were put in at that time?

Q. Can't you have an idea—was there five or six?

A. I didn't attend to that work; no, I didn't attend to that work.

Q. Didn't you see how many were put in—were you not on board the ship?

A. Yes, sir; I was on board, but exactly how many rivets there was put in at that time, I can't say.

Q. How long were they working on her before she went out again?

A. I don't remember so exactly; I don't remember if they left the following afternoon or if it was the day after; for instance, if she comes in on a Thursday I do not know whether she left on Friday or Saturday.

Q. When they put these rivets in, they repaired them right at the wharf?

A. Yes, sir; they put in the rivets right at the wharf.

Q. And she went from there right out on her voyage again?

A. Yes, sir.

By Mr. Grant;

Q. Within how many feet could the Dumois be fully stopped by reversing her engines at full speed?

A. Not so easy to say how many feet that would be; it would be different in the current and still water.

Q. In still water say in what space?

A. Not easy to say.

Q. In what length of time could she be stopped with the engines reversed at full speed?

A. I don't exactly know how many feet that would be, that wouldn't be so easy to say. It does not take more than five or ten minutes, I think; she is dead at once, her headway is dead at once.

Bernt Larsen, witness sworn on behalf on Claimant, testified as follows:

Direct Examination.

By Mr. Grant:

Q. What is your business?

A. Sailor.

Q. How long have you been a sailor?

A. Nine years.

Q. Are you an able seaman?

A. Yes, sir.

Q. Were you on board as part of the crew of the Albert Dumois on the night of January 27th and morning of January 28th, 1897?

A. Yes, sir.

Q. Where were you when the collision took place between the Dumois and the Argo?

A. At the wheel.

Q. How long had you been at the wheel?

A. Three or four minutes.

Q. Did you hear any signals from an approaching vessel while at the wheel?

A. No, sir.

Q. Did you hear any signals given by the Dumois, and if so, when was that signal given?

A. I heard it after I had taken the wheel and before I took the wheel.

Q. After the signals were given by the Dumois did you hear any signals in response?

A. The first time I heard one blow from the other.

Q. What was the next signal that you heard, either from the Dumois or the approaching vessel?

A. Likely from the approaching vessel.

Q. What was the next signal you heard?

A. It was two whistles from the Dumois.

Q. How many whistles did you hear in response to the first signal of the Dumois that you have testified to.

A. I heard only one.

Q. After you heard this single whistle, what whistle was given?

A. I heard two whistles from our boat.

Q. Did you hear any response?

A. No, sir.

Q. What was the next signal you heard?

A. I heard six or seven short blows from our whistle.

Q. Did you hear a whistle from any approaching vessel before the Dumois gave her signal of two blasts, which you have testified to?

Counsel for Libelant objects to the question as leading.

A. No. I did not.

Q. Which way were you facing at the time the first signal was given by the Dumois?

A. When the first signal was blown I was not at the wheel.

Q. Where were you?

A. I was forward on deck.

Q. What were you doing forward on deck?

A. I was coiling up rope.

Q. Had you taken the wheel at the time you heard the response to the Dumois's first signal?

A. No, sir.

Q. When did you take the wheel?

A. Between the first and second signal.

Q. Was it before or after the danger signal?

A. It was before, of course?

Q. How was the wheel of the Dumois at the time you relieved the other man?

A. It was laying starboard.

Q. What was the course of the vessel at that time?

A. We had no light in the binnacle; we steered after the pilot's command, and the vessel was turning, moving, swinging.

Q. Which way was the swinging in relation to the banks of the river?

A. She was swinging from the bank to port.

Q. From which bank of the river was the Dumois at this time—how far from it was she?

A. It was the east bank, I think they call it; I am not sure; it was the bank on the starboard side, about half a ship's length away.

Q. Did you see the lights of the approaching steamer?

A. Yes, sir.

Q. When did you first see them?

A. A minute or a minute and a half after I had taken the wheel.

Q. In what position was she approaching, was this approaching vessel at that time head on, or how was she—in what position did you have her when you saw her first?

A. On the starboard.

Q. How long was it between the time when you saw the lights first to the time the two vessels came in collision?

A. Two or three minutes.

Q. Do you know when the pilot telegraphed to reverse the engines?

A. Yes, sir.

Q. When was that?

A. It was right there, when he blew the danger signal he went from the whistle string to the telegraph.

Q. Were the engines of the steamship reversed or not in response to this telegraph?

A. Yes, sir; on our vessel it was stopped.

Q. How much was the speed of the vessel checked after the engines stopped and before the collision?

A. I don't know; I stood in the wheelhouse.

Cross-Examination.

By Mr. De Gray:

Q. When did you go on watch?

A. At 12 o'clock.

Q. What were you doing when you first went on watch?

A. Coiling up rope.

Q. Where?

A. Forward.

Q. Who was with you?

A. Two of the sailors.

Q. Who were they, what were their names?

A. One Henry Johnson and the other one Emanuel Nilsen.

Q. Where are those men now?

A. That I don't know; the last I heard from them one went to New York and the other went out with the schooner.

Q. Which one went with the schooner and which one went to New York?

A. Henry Johnson left with the schooner and Emanuel Nilsen went to New York.

Q. What schooner did he ship on?

A. That I don't know.

Q. When did they go away?

A. I can't so exactly say; it is about three months or a couple of months since.

Q. How many trips did they make on the Dumois after the collision?

A. One left the vessel while we were lying here and the other one—it is about a month sincet he left.

Q. Which one left the vessel while you were lying here?

A. Henry Johnson.

Q. Which schooner did he go on?

A. That I don't know.

Q. Where did the schooner run to?

A. That I don't know.

Q. How do you know he went on a schooner?

A. It was a Swedish companion, or friend, told me he went on board of a schooner.

Q. Who was that?

A. Charlie, we called him.

Q. What is his other name?

A. I don't know.

Q. Where does he live?

A. He lives here in New Orleans, I believe.

Q. Did these other men go on—Johnson and Nilsen, go on watch at the same time you did?

A. Nilsen came on at the same time, and Henry Johnson he was on watch.

Q. Who was on the lookout?

A. Henry Johnson.

Q. You didn't see the light of any approaching steamer before you went in the wheelhouse, did you?

A. No, I did not.

Q. Were you looking forward?

A. No, sir.

Q. Who was looking forward?

A. Henry Johnson.

Q. What time does the watch change, at 12 o'clock at night?

A. At 12 o'clock.

Q. Did I understand you correctly, that there was a signal blown on the Dumois and another signal blown on the approaching vessel before you took the wheel?

A. Yes, sir; there was a signal from our vessel and there was blown a signal from another vessel, but if it was the one that collided I can't say.

Q. And those two signals were blown before you took the wheel?

A. Yes, sir.

Q. The Albert Dumois blew two blasts and the other boat blew one blast?

A. Yes, sir.

Q. And then after that you took the wheel on the Dumois?

A. Yes, sir.

Q. And then after that you saw the lights of the approaching steamer?

A. Yes, sir.

Q. Do you know what a cross signal is?

A. No, I don't know anything about that.

Q. Don't you know that when one boat blows two signals and the other boat blows one signal that indicates that the boats are about to come together?

A. No, that I have no understanding about; I don't know about pilots' instructions down here.

Q. Don't you know that when one boat blows two signals and another boat blows one signal, that there is danger ahead?

A. How in the name of God I know. I haven't gone to any navigation school.

Q. Have you not been engaged in practical navigation for

nine years, according to your own statement, not in school, but in practice nine years as a sailor, not navigator?

A. Yes, sir; I have been on board of steamers and sailing ships before.

Q. You have been on steamers before?

A. Eight or nine months.

Q. When steamers are approaching one another is it customary to give signals for passing?

A. That I don't know; I have never observed any at sea; how it is here I don't know.

Q. How long have you been running up and down this river here?

A. Ten or twelve times.

Q. Are you in the habit of passing vessels going up and down the river?

A. Yes, sir; that happens.

Q. Does your vessel give a signal when passing?

A. Yes, sir; they give a signal.

Q. Well, when she goes to the right, what signal does she give?

A. I have heard them give one.

Q. When she goes to the left or port, what signal does she give?

A. Two.

Q. When the Dumois on this occasion blew two blasts of her whistle that signified what?

A. That signifies that she goes over to port with a starboard wheel.

Q. When the other boat that is coming towards her blows one signal what does that signify?

A. That is for port, of course.

Q. Then two signals on one vessel and one signal on the other vessel, means that both are going to port?

A. No, that cannot be.

Q. Well, what is it?

A. One to port and the other to starboard.

Q. Doesn't that mean that one is crossing the course of the other?

A. That I don't know; they may go to cross; that depends on their position.

Q. If the hour for changing the watch in the pilot house, say 12 o'clock—at what time was it that you were called to take the wheel in the pilot house?

A. About 25 minutes past 12.

Q. The time for changing though, is 12 o'clock, is it not?

A. Yes, sir.

Q. How did it happen that at 12 o'clock you did not take the wheel promptly?

A. It happens so that me and the other man that came on watch should haul up two ropes and coil them up.

Q. In the middle of the night?

A. Yes, sir.

Q. Is it common to coil up ropes in the middle of the night on that boat, or in the daytime?

A. It depends upon how we come in.

Q. What became of the man whom you relieved at the wheel?

A. That I don't know; he left the wheelhouse and I suppose went aft.

Q. Where were you when the collision occurred?

A. At the wheel.

Q. Who had the wheel at that moment?

A. It was me who had it.

Q. Did you have any idea that there was going to be any collision before the boats came together?

A. No, sir; not before I saw the lanterns.

Q. After you saw the lanterns did you have any idea there was going to be a collision?

A. Yes, sir; a couple of minutes afterwards I saw there would be a collision.

Q. You saw that before you took the wheel from the other man, did you not?

A. No; how could I see that when I didn't see the lanterns before I had taken the wheel.

Q. But you do know that there had been two signals given on your boat and one signal given on the other boat before you took the wheel?

A. Yes, sir; I know there was blown two signals from our boat, but who blew the other signal I don't know; I didn't have any time to look after that; I didn'tlook after that; I was busy coiling up ropes.

Q. And this was before you took the wheel?

A. It was only those two signals, one signal from our boat and another signal from another boat.

Q. Didn't those two signals indicate to your mind, as a sailor, that there might be danger ahead?

A. No, it did not, because it is so often they blow, one on one side of the river and the other on the other side of the river, and still they are blowing whistles.

Q. When you heard this single whistle from what direction did it come?

A. From forward.

Q. Who was the man who had the wheel before you did?
A. One by the name of Peter Wessel.
Q. Where is he?
A. That I don't know.
Q. Is he on the ship—on the Dumois?
A. No, sir.
Q. When did he leave her?
A. At the same time as Henry Johnson.
Q. Do you know where he is?
A. No, sir.
Q. Where did he go when he left, do you know?
A. Yes, sir he was on shore as long as I know.
Q. You don't know where he is now?
A. No, sir; that I have no idea about.

DEPOSITIONS OF JOHN B. HERRESHOFF AND OTHERS.

Filed Nov. 20th, 1897.

Oscar M. Springer :
vs. : No. 13,319.
Norwegian Steamship Albert Dumois. :

Testimony of John B. Herreshoff, Nathaniel G. Herreshoff and C. W. Young, all residing in Bristol, Rhode Island, taken under commssion issued in the above entitled and numbered cause, before Samuel Norris, Jr., a Notary Public in and for the State of Rhode Island, and Providence Plantations, on the 6th day of August, A. D. 1897.

John B. Herreshoff, being duly sworn to tell the truth, the whole truth and nothing but the truth, by said notary, says:

1st. Interrogatory: State your age, occupation and residence?
Answer to first Interrogatory: My age is 56 years. My residence is in Bristol, State of Rhode Island. My occupation that of a manufacturer of marine engines and boilers and builder of sail and steam yachts, torpedo boats and launches.
2nd Interrogatory: If you say you are engaged in bulding ships, state how long and under what name you have carried on such business?
Answer to 2nd Interrogatory: Have been personally engaged in the above business since 1861 and since 1879 under the name of Herreshoff Manufacturing Company.

3rd Interrogatory: Did you, or your firm, build and equip a steam vessel called the Leila; if yea, when and for whom did you, or your firm, build her?

Answer to 3rd Interrogatory: The Herreshoff Mfg. Co. built the steam yacht called the Leila in the year 1878, for Wm. H. Greham, of Baltimore, Maryland.

4th Interrogatory: Give the measurements and tonnage of said vessel; how fitted and equipped, and the price you received for her from the person, or persons, for whom she was built and equipped?

Answer to 4th Interrogatory: The Leila was 101 feet in length, 15 feet in breadth, 5 feet 10 inches in depth and 6 feet draught of water; was fitted with compound engines and coil boilers, equipped with boats, anchors and chains, masts, sails and rigging, etc., etc., according to law. The price received for the yacht was $12,000 and the steam yacht "Keppie," valued at $6,000.

5th Interrogatory: What would it now cost to build and equip a duplicate of said Yacht Leila in your establishment, or elsewhere?

Answer to 5th Interrogatory: It would cost at the present time $20,000 to build a duplicate of said yacht Leila at our works.

6th Interrogatory: What effect does age have on the value of vessels, such as the Leila? If you say they depreciate with age, state to what extent?

Answer to 6th Interrogatory: Age depreciates the value of all vessels, and in a vessel of the Leila's age the depreciation would probably be from one-third to one-half the original value.

7th Interrogatory: State any other matter, or thing, to your knowledge bearing on this the subject of your examination which may be of advantage to the parties in this case, as fully as if you were particularly interrogated thereunto?

Answer to the 7th Interrogatory: We find in practice that the depreciation would take place no matter if the boat has been renewed in part, either by rebuilding hull or by replacing machinery.

Cross-Interrogatory.

1st Cross-Interrogatory: If you state that you or your concern were the original builders of the yacht formerly called the Leila, and afterwards the Argo, please give a full description of her, her length over all, her length on the water line, her beam, her depth of hold, the material of her construction, the character and style of her cabin, and state her speed, and give a picture or photograph of her as she looked at the time of her completion.

Answer to 1st Cross-Interrogatory Length over all, 101 feet; length on water line, about 95 feet, beam 15 feet 4 in.; depth of hold, 5 feet 10 in.; material of her construction, composition; oak keel, iron frame, yellow pine planking, and Michigan pine deck; character and style of her cabin, she had a long saloon, a galley and one stateroom aft; finished generally in soft wood and painted; small cabin forward of machinery finished in like manner; her speed was about 16 statute miles. I produce a photograph of the yacht Leila, and the same is marked "Exhibit Photograph of Leila."

(Same is sent up in original, per agreement.)

2nd Cross-Interrogatory: What are the elements of value of a steam yacht of the character of the Leila or Argo, and is not speed one of those elements, and if yes, is it not a very considerable element of value?

Answer to 2nd Interrogatory: The elements of speed is an item, but does not add to the selling value as much as is generally supposed. The other elements are comfort and safety.

3rd Cross-Interrogatory: If you give an estimate of the value of the Argo at the time she was sunk, in January, 1897, please state upon what that estimate is based, and whether it is not based on the condition of her as you supposed it would be, or ought to be, at this number of years and after she had been built by you, and without reference to what has been done to her since she left your place?

Answer to 3rd Cross-Interrogatory: I have given no such estimate.

4th Cross-Interrogatory: Suppose the Argo had a new boiler and a new hull since she left your place, and that the latter was built as late as 1893, and included a new deck, new steel frame, planked with two-inch white oak plank of the very best quality and as late as January, 1897, had had her boiler tested to a hydrostatic pressure of 186 pounds, and had been allowed a working pressure of 124 pounds, and could run at the rate of 21 miles per hour, and she was in all respects in first-class condition, the hull alone costing in excess of $10,000, what would you then say was her value when lost in January, 1897?

Answer to 4th Cross-Interrogatory: I could not make any estimate of her value unless I had had a survey made of her just before the accident.

5th Cross-Interrogatory: When you speak of value of the Argo, in what market do you refer to in referrence to what place in the country do you speak?

Answer to 5th Cross-Interrogatory: All my estimates are based upon delivery in the vicinity of New York.

6th Cross-Interrogatory: Suppose the Argo had been sold the day before she was lost to be delivered the next day, for the price of $15,000, and the sale was only prevented by the sinking of the boat by collision on the 28th day of January, 1897, what would you then say was her value at the time of her sinking?

Answer to 6th Cross-Interrogatory: The price that two parties may agree upon has not in my opinion anything to do with the market value.

7th Cross-Interrogatory: If you give the cost of the Leila as she was built, do you mean to say that was her market value at that time, and if it was not, please state what she would have sold for at said time or any other time?

Answer to 7th Cross-Interrogatory: Her market value was fixed at $18,000, by the fact that we, as builders, obtained that price, or its equivalent for her.

8th Cross-Interrogatory: State anything else you may know touching the value of the Leila or Argo at the time she was lost in January, 1897, in the lower Mississippi river?

Answer to 8th Cross-Interrogatory: I know nothing about her value at that time.

(Signed) JOHN B. HERRESHOFF.

Nathaniel G. Herreshoff, being duly sworn to tell the truth, the whole truth, and nothing but the truth by said Notary, says:

1st Interrogatory: State your age, occupation and residence?

Answer to 1st Interrogatory: My age is 49 years; my residence is in Bristol, Rhode Island; my occupation is that of designer and manufacturer of marine engines and boilers, and designer and builder of sailing and steam yachts, torpedo boats and launches.

2nd Interrogatory: If you say you are engaged in building ships, state how long and under what name you have carried on such business?

Answer to 2nd Interrogatory: I have been engaged in this business since 1877, and since 1879, under the Herreshoff Mfg. Co.

3rd Interrogatory: Did you or your firm, build and equip a steam vessel called the Leila? If yea, when and for whom did you, or your firm build her?

Answer to 3rd Interrogatory: The Herreshoff Mfg. Co., built the steam yach Leila in the year 1878, for William K. Graham, of Baltimore, Maryland.

4th Interrogatory: Give the measurements and tonnage of said vessel; how fitted and equipped, and the price you received

for her from the person, or persons, for whom she was built and equipped.

Answer to 4th Interrogatory: The Leila was 101 feet in length, 15 feet in breadth, 5 feet 10 in. deep, and her draught of water was 6 feet. She was fitted with compound engines and a coal boiler, was equipped with boats, anchors and chains, masts, sails and rigging, etc. The price received for her was $12,000, and the steam yacht "Kelpie" valued at $6,000.

5th Interrogatory: What would it cost now, to build and equip a duplicate of said Yacht Leila in your establishment, or elsewhere?

Answer to 5th Interrogatory: It would cost say from $19,000 to $20,000, at the present time to duplicate the Leila, owing to higher wages and material.

6th Interrogatory: What effect does age have on the value of vessels, such as the Leila? If you say they depreciate with age, state to what extent?

Answer to 6th Interrogatory: They depreciate with age to a variable extent, depending on the care and repairs made on the boat. A yacht like the Leila, would depreciate in nineteen years at least a third in value, notwithstanding repairs and renewals. The probability is that nine out of ten vessels reaching the age of nineteen or twenty years, would not be worth one-third their original cost.

7th Interrogatory: State any other matter, or thing to your knowledge bearing on this subject of your examination which may be of advantage to the parties in this case, as fully as if you were particularly interrogated thereunto?

Answer to 7th Interrogatory: I don't think of anything else.

Cross-Interrogatory.

1st Cross-Interrogatory: If you state that you or your concern were the original builders of the yacht formerly called the Leila, and afterwards the Argo, please give a full dscription of her, her length over all, her length on the water line, her beam, her depth of hold, the material of construction, the character and style of her cabin, and state her speed, and give a picture or photograph of her as she looked at the time of her completion?

Answer to 1st Cross-Interrogatory: My answer to this question is the same as my brother, Mr. John B. Herreshoff's.

2nd Cross-Interrogatory: What are the elements of value of a steam yacht of the character of the Leila or Argo, and is not speed one of those elements, and if yes, is it not a very considerable element of value?

Answer to 2nd Cross-Interrogatory: Size, general efficiency, safety, speed, manner of construction. Speed is certainly not the most prominent element.

3rd Cross-Interrogatory: If you give an estimate of the value of the Argo at the time she was sunk in January, 1897, please state upon what that estimate is based, and whether it is not based on the condition of her as you supposed it would be, or ought to be at this number of years after she had been built by you, and without reference to what has been done to her since she left your place?

Answer to 3rd Cross-Interrogatory: I couldn't attempt to make an estimate of her after she left our place.

4th Cross-Interrogatory: Suppose the Argo had a new boiler and a new hull since she left your place, and that the latter was built as late as 1893, and included a new deck, new steel frame, planked with two-inch white oak plank, of the very best quality, and as late as January, 1897, had had her boiler tested to a hydrostatic pressure of 186 pounds, and had been allowed a working pressure of 124 pounds, and could run at the rate of 21 miles per hour, and she was in all respects in first-class condition, the hull alone costing in excess of $10,000, what would you then say was her value when lost in January, 1897?

Answer to 4th Cross-Interrogatory: That I would not want to make an estimate on.

5th Cross-Interrogatory: When you speak of the value of the Argo, in what market do you refer to in reference to what place in the country do you speak?

Answer to 5th Cross-Interrogatory: If this question refers to Cross-Interrogatory 4, I make no answer.

6th Cross-Interrogatory: Suppose the Argo had been sold the day before she was lost to be delivered the next day, for the price of $15,000, and the sale was only prevented by the sinking of the boat by collision on the 28th of January, 1897, what would you then say was her value at the time of her sinking?

Answer to 6th Cross-Interrogatory: This does not give me the basis for an estimate.

7th Cross-Interrogatory: If you give the cost of the Leila as she was built, do you mean to say that was her market value at that time, and it was not, please state what she would have sold for at said time or any other time?

Answer to 7th Cross-Interrogatory: She sold at that time for $18,000 or its equivalent.

8th Cross Interrogatory: State anything else you may know touching the value of Leila or Argo at the time she was lost in January, 1897, in the lower Mississippi river?

Answer to 8th Cross-Interrogatory: I don't know anything else as to her value at that time.

(Signed) NATHANIEL G. HERRESHOFF.

C. W. Young, being duly sworn to tell the truth, the whole truth, and nothing but the truth by said Notary, says:

1st Interrogatory: State your age, occupation and residence?

Answer to 1st Interrogatory: Age, 44; occupation, bookkeeper and secretary of the Herreshoff Mfg. Co.; residence, Bristol.

2nd Interrogatory: If you say you are engaged in building ships, state how long and under what name you have carried on such business?

Answer to 2nd Interrogatory: I have been connected with the Herreshoff Mfg. Co. 10 years.

3rd Interrogatory: Did you, or your firm, build and equip a steam vessel called the Leila? If yea, when and for whom did you, or your firm, build her?

Answer to 3rd Interrogatory: It appears by the books of the Herreshoff Mfg. Co., kept by a former secretary, that the steam yacht Leila, was built by that company in 1878.

4th Interrogatory: Give the measurements and tonnage of said vessel; how fitted and equipped, and the price you received for her from the person, or persons for whom she was built and equipped?

Answer to 4th Interrogatory: I cannot give measurements or tonnage. It appears by the books of the company that $12,000, and the steam yacht Kelpie, valued at $6,000, was received for said yacht Leila.

5th Interrogatory: What would it now cost to build and equip a duplicate of said yacht Leila in your establishment, or elsewhere?

Answer to 5th Interrogatory: I don't think I am competent to answer that question or the next one, or to give any additional information in answer to the last question.

Cross-Interrogatories.

Answer to Cross-Interrogatories: I am not competent to answer any of the cross-questions.

(Signed) C. W. YOUNG.

Photograph of "Leila" annexed to deposition of John E. Herreshoff, offered in behalf of Claimant and filed December 16th, 1897.

(Sent up in the original, per agreement.)

Petition and proceedings under the "Limited Liability Act," offered by Claimant.

(Copied at pp. 11 and 36 of this Transcript.)

DECREE

Extract from Judgment Book.

November Term.

New Orleans, Saturday, January 29, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, Judge.

No. 13,319—Oscar M. Springer vs. S. S. Albert Dumois.

No. 13,323—Mrs. Marie B. Bourgeois de Blesine vs. S. S. Albert Dumois.

These causes, consolidated, came on at this Term, to be heard upon the pleadings, exhibits, evidence and depositions, as specified in the respective notes of evidence on file; and were argued by the proctors for the parties, in interest, and submitted; when the court took time to consider:

Upon due consideration whereof, and for the reasons assigned orally,

It is ordered, adjudged and decreed that the libelant, Oscar M. Springer, Mrs. Marie B. Bourgeois de Blesine and Mrs. Genevieve Keplinger Hester, widow of Harrison P. Hester, individually and as natural tutrix of his minor child, Harrison Hester, do have and recover from the Steamship Albert Dumois, with cost of suit, as follows, to-wit:

Oscar M. Springer, the sum of Eleven Thousand Dollars ($11,000.00.)

Mrs. Marie B. Bourgeois de Blesine, the sum of Two Thousand Five Hundred Dollars ($2,500.00.)

Mrs. Genevieve Keplinger Hester, widow of Harrison P. Hester, individually and as such widow, the sum of Three Thousand Dollars ($3,000.00.)

Mrs. Genevieve Keplinger Hester, widow of Harrison P. Hester, as natural tutrix of his and her minor child, Harrison Hester, the sum of Two Thousand Dollars ($2,000.00.)

It is further ordered, adjudged and decreed that the following named interveners do have and recover from said steamship Albert Dumois, with costs, as follows, to-wit:

Robert S. Orkney, the sum of Twenty 25/100 dollars ($20.25.)

C. A. Deseamus the sum of Four Dollars ($4.00.)

Isaac Broadhurst the sum of Forty-one 45/100 dollars ($41.45.)

James Brown the sum of Two hundred and thirteen dollars ($213.00.)

Sam'l. Jewett the sum of Twenty-five 50/100 dollars ($25.50.)

E. C. Green the sum of Five dollars ($5.00.)

And whereas, the said steamship Albert Dumois has been released from seizure herein and restored to the claimant thereof, upon a stipulation conditioned according to law, with Anders Jakobson, of Christiana, Norwayy, claimant and owner of said steamship by Ludwig B. Rustad, Master and lawful bailee thereof, for the owner, as principal, and Isidore Newman, Sr., of New Orleans, La., as surety on said stipulation,

It is further adjudged and decreed that the said principal and surety on said stipulation for the release of said steamship, be condemned in solido to pay the foregoing decree with interest thereon at the rate of five per cent (5%) per annum from this date until paid, and all costs of this cause.

Decree entered January 29, 1898.

Decree signed February 3, 1898.

(Signed) CHARLES PARLANGE,
Judge.

MOTON AND ORDER FOR APPEAL.

Filed Feb'y. 8th, 1898.

Oscar M. Springer, :
vs. : No. 13,319.
S. S. Albert Dumois. :

On motion of J. D. Rouse and William Grant, Proctors for Anders Jakobson, claimant in the above cause, made in open Court, suggesting that there is error in the final decree rendered herein on the 29th day of January, and signed on the 3rd of February, 1898, to his prejudice, and that he desires to appeal therefrom, and has filed herewith an assignment of errors,

It is ordered that the said Anders Jakobson be allowed an appeal from said decree, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable in thirty (30) days; and that the appeal operate as a supersedeas upon appellant filing a bond in the sum of Five hundred ($500.00) dollars, with good and solvent surety, conditioned as the law directs; and in consideration of the stipulation of the parties filed herewith, it is ordered that the following exhibits filed in evidence be sent up in the original:

2 Charts of the Mississipi river filed by libelant.

1 Picture of Steam Yacht Argo, filed by libelant, No. 2.

1 Piece of Painted wood, marked Argo 1.

1 Piece of rope, marked Argo 2.

1 Photograph of "Leila," annexed to deposition of John B. Herreshoff.

Rules and Regulations of Supervising Inspectors of Steam Vessels.

ASSIGNMENT OF ERRORS.

Filed Feb'y. 8, 1898.

1st. The Court erred in finding the Steamship Albert Dumois in fault for the collision under the evidence, and in awarding damages against her in favor of the libelant and interveners.

2nd. The Court erred in not finding that the Steam Yacht Argo was solely in fault for the collision, and so decreeing.

3rd. The Court should have found, and the Court erred in not finding, as a matter of fact and law from the evidence, that said Argo was in fault for said collision, in the following particulars:

A. In being so constructed as to be incapable of reversing her engines, backing and stopping when it might become necessary for her to do so under the rules of navigation.

B. It being insufficiently officered and manned, and not keeping a proper lookout.

C. In being out of her proper place in the river, and invading the course of the Dumois, which was ascending on the east bank, and in running at an excessive, dangerous and reckless speed, at and before the time of the collision, and not attempting to stop to prevent a collision.

D. In not recognizing the right of the Dumois to starboard her helm at the time she did, for the purpose of clearing the Tug Day Dream and Luggers lying on the east bank of the river, directly ahead, and governing herself accordingly.

E. In neglecting to comply with her own signal when she first gave one blast of her whistle, and in afterwards tardily porting and attempting to cross ahead of the Dumois, thereby directly causing the collision, when she might have avoided it by stopping, by keeping her course, or by starboarding her helm.

4th. The Court erred in not finding as matter of fact and law from all the evidence, that the Dumois was ascending the river in her proper course near the east bank, and that the Argo was descending the river out of her proper place, head on, or nearly so, to the Dumois, when the two vessels first exchanged signals for passing.

5th. The Court erred in finding the Dumois in fault for starboarding her helm, at the time she did, for the purpose of

clearing the said Tug and Luggers then lying on the east bank of the river ahead of her.

6th. The Court erred in finding that the Dumois was in fault in not porting her helm to pass the Argo.

7th. The damages awarded against the Dumois are excessive, and exceed the losses suffered by the libelant and interveners by one-half, whether the Dumois was wholly or only partly in fault.

Wherefore, and for other plain errors disclosed by the record, appellant prays that the decree of the District Court be reversed and set aside, and that the Libel and interventions filed herein be dismissed with costs.

(Signed) J. D. ROUSE,
(Signed) WM. GRANT,
Proctors for Appellant.

AGREEMENT.

Filed Feb. 8th, 1898.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

For the purpose of the appeal in this cause it is stipulated that the following exhibits, offered and filed in evidence at the trial, may be sent up in the original and used at the hearing in that form:

2 Charts of the Mississippi river.
1 Picture of the Argo marked Libelant No. 2.
1 Piece of Painted Wood marked Argo 1.
1 Piece of Rope marked Argo 2.
1 Photograph of "Leila" annexed to dep. of John B. Herreshoff.

Exhibt "A," offered by Libelant in connection with cross-examination of Lund.

Rules and Regulations of Supervising Inspectors of steam vessels. February 8th, 1898.

(Signed) J. D. ROUSE,
(Signed) WM .GRANT,
Proctors for Claimant.
(Signed) RICHARD DE GRAY,
Proctor for Libelant.
(Signed) DENEGRE, BLAIR & DENEGRE,
Proctors for Mrs. Hester.

APPEAL BOND.

Filed Feb. 8th, 1898.

Know all men by these presents, that we, Anders Jakobson, as principal, and William Grant, of New Orleans, as sureties, are held and firmly bound unto Mrs. Genevieve Keplinger Hester, individually and as natural Tutrix of the minor Harrison Hester; Mrs. Marie B. Bourgeois de Blesine, Oscar M. Springer, Robert S. Orkney, C. A. Deseamus, Issac Broadhurst, James Brown, Samuel Jewitt and E. C. Green, appellees, in the full and just sum of five hundred dollars ($500.00) to be paid to the said Appellees, their certain attorney, executors administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 8th day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas, lately at a term of the United States District Court for the Eastern District of Louisiana, in a suit depending in said Court, between Oscar M. Springer, libelant; Mrs Genevieve Keplinger Hester, individually and as natural tutrix of the minor Harrison Hester, Mrs. Marie B. Bourgeois de Blesine, Robert S. Orkney, C. A. Deseamus, Isaac Broadhurst, James Brown, Samuel Jewett and E. C. Green, interveners, and Anders Jakobson, claimant of said steamship, and in favor of said Libelant and interveners in the aggregate sum of $18,808.50 and costs and the said Anders Jakobson having obtained an order of appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the said decree in the aforsaid suit, and a citation directed to the said appellees citing and admonished them to be and appear before the United States Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the day thereof.

Now, the condition of the above obligation is such, that, if the said Anders Jakobson, appellant, shall prosecute his said appeal to effect and answer all damages and costs, if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) ANDERS JAKOBSON,
By his Proctor, Wm. Grant.
(Signed) WILLIAM GRANT.

Sealed and delivered in presence of
(Signed) D. C. MELLEN.

Approved by
(Signed) CHARLES PARLANGE, Judge.

CITATION OF APPEAL.

The United States of America,
Fifth Judicial Circuit.

The President of the United States to Mrs. Genevieve Keplinger Hester, individually and as a natural tutrix of the minor Harrison Hester; Mrs. Marie B. Bourgeois de Blesine; Oscar M. Springer; Robert S. Orkney; C. A. Deseamus; Isaac Broadhurst; James Brown; Samuel Jewett and E. C. Green, Appellees, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Fifth Circuit at New Orleans, Louisiana, within 30 days from the date hereof, pursuant to an order of appeal sued out and filed in the Clerk's office of the United States District Court for the Eastern District of Louisana, in the cause wherein Oscar M. Springer is libelant, and Mrs. Genevieve Keplinger Hester, individually and as a natural tutrix of the minor Harrison Hester; Mrs. Marie B. Bourgeois de Blesine, Robert S. Orkney, C. A. Deseamus, Isaac Broadhurst, James Brown, Samuel Jewett and E. C. Green are intervening libelants, and the Norwegian Steamship Albert Dumois, Anders Jakobson, claimant, is defendant, No. 13,319 on the docket of said District Court, to show couse, if any there be, why the final decree rendered against the said steamship Albert Dumois, and Anders Jakobson, claimant, as in said decree mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles Parlange, Judge of the District Court of the United States for the Eastern District of Louisiana, this 8th day of February, in the year of our Lord one thousand eight hundred and ninety-eight.

(Signed) CHARLES PARLANGE,
Judge.

Service of the within citation accepted for libelant and interveners, except Mrs. Hester, with reservation of all legal rights.
February 8th, 1898.

(Signed) R. DE GRAY,
Proctor for Libelant and above Interveners.

(Signed) DENEGRE, BLAIR & DENEGRE,
Attys. for Mrs. Hester.

United States of America,
District Court of the United States,
Eastern District of Louisiana.

Clerk's Office.

I, Frank Hastings Mortimer, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 436 pages contain and form a full, complete, true and perfect transcript of the Record and Proceedings had, together with all the evidence adduced on the trial of the case of Oscar M. Springer vs. Steamship Albert Dumois, No. 13,319 of the docket of said Court.

Witness my hand and the seal of said Court, at the City of New Orleans, this 26 day of February, A. D. 1898.

[Seal] FRANK H. MORTIMER, Clerk.

DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF LOUISIANA.

OSCAR M. SPRINGER
vs.
SEAMSHIP ALBERT DUMOIS.

No. 13,319.

Appearances:
Richard De Gray, Esq., for Libelant, Appellant.
A. M. Aucoin, Esq., for Mrs. M. B. de Blesine, Libelant.
Messrs. Denegre, Blair & Denegre, for Mrs. Hester, Libelant.
Messrs. Rouse & Grant, for Claimant of Steamship Albert Dumois.

TRANSCRIPT OF PROCEEDINGS ON APPEAL BY OSCAR M. SPRINGER, LIBELANT.

Appeal from the District Court of the United States for the Eastern District of Louisiana, to the United States Court of Appeals for the Fifth Circuit, returnable within thirty days from March 10th, A. D. 1898, at New Orleans, Louisiana.

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District Court of the United States,
Eastern District of Louisiana.

PETITION OF OSCAR M. SPRINGER FOR AN APPEAL.

Filed March 10th, 1898.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

To the Judge of the District Court of the United States for the Eastern District of Louisiana:

The petition of Oscar M. Springer, libelant in the above entitled and numbered suit, respectfully shows:

That there is error in the final decree rendered in the above suit on the 29th day of January, 1898, and signed on the 3d day of February, 1898, to his prejudice, and especially insofar as said decree only awards libelant $11,000 for the loss of said Argo, whereas it should at least have awarded him $20,000, and insofar as said decree does not allow him interest from the date of the loss of his said vessel, to-wit, on January 28th, 1897, and he desires to appeal from said decree, and has filed herewith an assignment of errors, and notice of severance to the other beneficiaries under said decree.

Wherefore, he prays that he be allowed an appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days, upon giving bond according to law, and for all general relief.

(Signed) R. De GRAY,
Proctor for Libelant, O. M. Springer.

Order on Foregoing Petition:

Considering the foregoing petition, it is ordered that the said Oscar M. Springer, libelant, be allowed an appeal from said decree, returnable to the United States Circuit Court of Appeals for the Fifth Circuit, within thirty (30) days from this date, upon said appellant filing a bond in the sum of one hundred dollars ($100.00) with good and solvent surety, conditioned as the law directs.

New Orleans, La., March 10, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judge.

ASSIGNMENT OF ERRORS.

Filed March 10th, 1898.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

First: The Court erred in the amount decreed to the libelant as the value of the Argo, to-wit, $11,000, because said amount was entirely too small, as the evidence showed, at the time of her loss she was fully worth $20,000, for which a decree should have been rendered in favor of libelant, with interest from the day of her loss on January 28th, 1898 [1897], and because the

evidence further showed that one-half interest in said Argo had been sold in New Orleans, to be delivered the day after that on which she was lost for $7,500, and that in no event should said decree have been for less than $15,000 with interest from the date of said loss, to-wit, January 28th, 1897.

Second: The Court erred because said decree for $11,000, even if that were the correct value of said Argo at the time of her said loss, did not allow interest from the date of said loss, to-wit, January 28th, 1897.

(Signed) RICHARD DE GRAY,
Proctor for Libelant, Oscar M. Springer.

APPEAL BOND.

Filed March 10th, 1898.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

Know all men by these presents that we, Oscar M. Springer, by his attorney in fact, Richard De Gray, as principal, and the American Surety Company, of the said city and State of New York, as surety, are held and firmly bound unto Anders Jakobson, of Christiana, Norway, claimant and owner of the steamship Albert Dumois, in the full and just sum of one hundred dollars ($100.00), to be paid to the said Anders Jakobson, Claimant, as aforesaid, his certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this tenth day of March, in the year of our Lord one thousand, eight hundred and ninety-eight.

Whereas, lately at a session of the District Court of the United States for the Eastern District of Louisiana, in a suit depending in said Court between Oscar M. Springer, libelant; Mrs. Genevieve Keplinger Hester, individually and as a natural tutrix of the minor Harrison Hester; Mrs. Marie B. Bourgeois de Blesine, Robt. S. Orkney, C. A. Desseamus, Isaac Broadhurst, James Brown, Samuel Jewett, and E. C. Green, interveners, and Anders Jakobson, Claimant of said Steamship "Albert Dumois," No. 13,319 of the docket, a judgment was rendered against the said Anders Jakobson, Claimant, etc., and the said Oscar M. Springer having obtained an order of appeal and filed

a copy thereof in the Clerk's office of the said Court, to increase the said decree in the aforesaid suit, and a citation directed to the said Anders Jakobson, Claimant, as aforesaid, citing and admonishing him to and appear before the United States Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within thirty days from the date hereof.

Now, the condition of the above obligation is such, that if the said Oscar M. Springer shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of
(Signed) F. H. MORTIMER,
U. S. Comm'r.

(Signed) OSCAR M. SPRINGER,
By R. DE GRAY, Proctor.

THE AMERICAN SURETY CO. OF NEW YORK,
By A. A. MAGINNIS,
Resident Vice President.
PETER F. PESCUD,
Resident Asst. Secretary.

Approved by
(Signed) CHARLES PARLANGE,
U. S. Judge.

NOTICE OF SEVERANCE.

Filed March 10th, 1898.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

To Mrs. Genevieve Keplinger, widow, etc., and tutrix to her minor child, Mrs. Marie B. Bourgeois de Blesine, Isaac Broadhurst, Robert J. Orkney, Samuel Jewitt, James Brown, E. C. Green and C. A. Desseamus, libelants and intervening libelants and petitioners in the above entitled and numbered suit:

You and each of you are hereby notified that the above named libelant, Oscar M. Springer, will, on the 10th day of March, 1898, at 11 o'clock A. M., apply to the above Court for the allowance of an appeal from the judgment rendered in the above entitled and numbered suit on the 29th day of January, 1898, and signed on the 3d day of February, 1898, in his favor

for the sum of $11,000, returnable to the U. S. Circuit Court of Appeals for the Fifth Circuit, and you are further notified to be present at the above time and place and join in said appeal in case you desire to do so.

New Orleans, March 8th, 1898.

Very respectfully,
(Signed) OSCAR M. SPRINGER,
Libelant in the above Suit.

Indorsed on face:
Service accepted for Mrs. Marie B. De Blesine.
(Signed) A. M. AUCOIN,
Atty. for Mrs. De Blesine.
(Signed) DENEGRE, BLAIR & DENEGRE,
For Mrs. Hester.
(Signed) ROBT. S. ORKNEY,
(Signed) SAM JEWITT,
(Signed) JAMES BROWN,
(Signed) ISAAC BROADHURST,
By R. De Gray, Proctor.
(Signed) E. C. GREEN,
By R. De Gray, Proctor.
(Signed) C. A. DESSEAMUS,
By R. De Gray, Proctor.

CITATION OF APPEAL.

Issued March 10th, 1898.

Oscar M. Springer :
vs. : No. 13,319.
Steamship Albert Dumois. :

The United States of America,
Fifth Judicial Circuit.

The President of the United States to Anders Jakobsen, Claimant of the Steamship Albert Dumois, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Fifth Circuit at New Orleans, Louisiana, within 30 days from the date hereof, pursuant to a petition and order of appeal sued out and filed in the Clerk's office of the District Court of the United States for the Eastern District of Louisiana in the cause wherein

Oscar M. Springer is libelant, and Mrs. Genevieve Keplinger Hester, individually and as natural tutrix of her minor child, Harrison Hester; Mrs. Marie B. Bourgeois de Blesine, are also libelants, and Robert S. Orkney, C. A. Desseamus, Samuel Jewitt, James Brown, Isaac Broadhurst and E. C. Green, intervenors, against the Steamship "Albert Dumois," No. 13,319 on the docket of said Court, and wherein you, said Anders Jakobsen, are claimant of said steamship and principal on the stipulation of the release thereof, to show cause, if any there be, why the decree rendered in said cause should not be increased in amount of damages awarded Oscar M. Springer, as in said petition for appeal and assignment of errors filed therewith mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles Parlange, Judge of the District Court of the United States, for the Eastern District of Louisiana, this 10th day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

(Signed) CHARLES PARLANGE,
Judge.

(Indorsed): Service of within citation accepted March 10, 1898.

(Signed) ANDERS JAKOBSEN,
By Rouse & Grant, his Proctors.

UNITED STATES OF AMERICA.

District Court of the United States,
Eastern District of Louisiana.

Clerk's Office.

I, Frank Hastings Mortimer, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 7 pages contain and form a full, complete, true and perfect transcript of the Proceedings had on the petition of Oscar M. Springer for an appeal in the cause entitled "Oscar M. Springer vs. SS. Albert Dumois," No. 13,319 of the docket of said Court.

Witness my hand and the seal of said Court, at the City of New Orleans, this 11 day of March, A. D. 1898.

[Seal] FRANK H. MORTIMER, Clerk.

United States Circuit Court of Appeals, Fifth Circuit.
November Term, 1897.

Tuesday, April 26, 1898.

(Extract from Minutes.)

Anders Jakobsen, Claimant, :
vs. : 687.
O. M. Springer, et als. :

Appeal and Cross-Appeal.

This cause came on to be heard this day, and after argument by Mr. Richard DeGray for appellee, O. M. Springer, the further argument was postponed until to-morrow.

November Term, 1897.

Wednesday, April 27, 1898.

(Extract from Minutes.)

Anders Jakobsen, Claimant, :
vs. : 687.
O. M. Springer, et als. :

Appeal and Cross-Appeal.

This cause came on again to be heard this day and was submitted to the Court after further argument by Mr. Richard DeGray for Appellee, O. M. Springer, and by Mr. Wm. Grant for Appellant, and by Mr. George Denegre for Appellee, Mrs. Genevieve Hester.

United States Circuit Court of Appeals, Fifth Circuit.
November Term, 1897.

Tuesday, May 17, 1898.

(Extract from Minutes.)

Anders Jakobsen, Claimant, Appellant, :
vs. :
O. M. Springer, et als., Appellees. :

O. M. Springer, Cross-Appellant, :
vs. :
Anders Jakobsen, Claimant, et als., :
Cross-Appellees. :

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the District Court in this cause be, and is hereby reversed, and this Court does now here find that all the damages sustained by libelants and interveners herein were incurred by reason of a collision between the steamship "Argo" and the steamship "Albert Dumois," and that said steamships were mutually at fault for said collision, and that as between the owners of said steamships, the damages incurred should be divided.

The court doth further find that the damages sustained by the steamship Albert Dumois amounts to the sum of $185.00, and that the damages sustained by Oscar M. Springer, owner of steamship Argo, amounts to the sum of $15,000.00.

And it now appearing that both of said steamships have been duly surrendered to the Court as provided by law, and that the wreck of the Argo is of no value, and that the steamship Albert Dumois has been duly appraised and released from seizure upon a stipulation condition according to law with Anders Jakobsen, claimant, as principal, and Isidore Newman, Sr., as surety.

It is now ordered, adjudged and decreed that Mrs. Genevieve Keplinger Hester, widow of Harrison P. Hester, do have and recover individually, and as such widow, of and from said Anders Jakobsen, Claimant, and Isidore Newman, Sr., (surety as aforesaid), in solido, the sum of three thousand dollars ($3,000.00), and that she do likewise have, as the natural tutrix of her minor son, Harrison Hester, the further sum of two thousand dollars ($2,000.00).

It is further decreed that Mrs. Marie B. Bourgeois de Blesine do have and recover of said Anders Jakobsen and said Isidore Newman, Sr., (surety as aforesaid), in solido, the sum of two thousand five hundred dollars ($2,500.00.)

It is further decreed that the following named interveners, being members of the crew of the steamship "Argo," do have and recover of said Anders Jakobsen, Claimant, and said Isidore Newman, Sr., (surety aforesaid), in solido, the following sums, to-wit:

Robert Orkney	$ 10.13
C. A. Deseamus	2.00
Isaac Broadhurst	20.73
James Brown	106.50
Samuel Jewett	12.75
E. C. Green	2.50

Being one-half of the damages sustained by them respectively.

It is further ordered, adjudged and decreed that O. M. Springer, owner of the steamship Argo, do have and recover of said Anders Jakobsen, claimant, and Isidore Newman, Sr., surety, in solido, the sum of seven thousand five hundred dollars ($7,500.00), subject, however, to a credit of $92.50 in favor of said Jakobsen and Newman, for one-half of the damages sustained by the Dumois, and to a credit of one-half of the amounts hereinbefore decreed in favor of Mrs. Hester and Mrs. Blesine, all of which credits aggregate the sum of $3,842.50, leaving a balance due on this decree in favor of O. M. Springer, claimant, for the sum of $3,657.50, and that said Springer have execution only for said sum of $3,657.50.

It is further decreed that the costs of appeal be equally divided between said Anders Jakobsen, claimant, and said O. M. Springer; and that said Anders Jakobsen, claimant, and said Isidore Newman, Sr., surety as aforesaid, be condemned to pay all the costs of this cause in said District Court.

PETITION OF O. M. SPRINGER FOR REHEARING.

UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

No. 687.

ANDERS JACOBSEN, CLAIMANT OF NORWEGIAN STEAMSHIP ALBERT DUMOIS,
Appellant,

versus

OSCAR M. SPRINGER, ET ALS.,
Appellees.

OSCAR M. SPRINGER
Appellant,

versus

ANDERS JACOBSEN,
Appellee.

PETITION FOR REHEARING.

To the Honorable the United States Circuit Court of Appeals for the Fifth Circuit:

Oscar M. Springer, Appellee and Cross-Appellant, respectfully asks for a rehearing in the above entitled and numbered cause, among others, for the following reasons, to-wit:

1st. Because neither as to the place of the Argo in the river when she discovered the lights of the Dumois, nor in the signals she gave, nor in the maneuvres she made was she in any way in fault.

Her place in the river, and that she was in the middle, is demonstrated not only by Brown, her master, Deesemus, her lookout, Orkney, her engineer, Green, her cook (all of whom say she was in the middle of the river), by the disinterested spectators on the river bank abreast of where the collision occurred (Jurish and Deedes), and all this is supported by the evidence of Broadhurst, fireman, and Lindauer, newspaper reporter, after they came on deck immediately after the collision, the latter of whom says that when he came on deck and realized the situation, he noticed the Argo was only about 200 or 250 feet from the river bank.

And this is all supported, and, as we think, demonstated to be correct by the finding of the Argo's wreck within 500 feet of the western bank of the river, where the collision must have occurred, because the Argo never changed position in the river after the collision, but began to sink at once, and was out of sight in four minutes after the collision occurred. This is the evidence of those on the Argo, to-wit, Orkney, who started the Argo's engines as her crew were entering her yawl, when she was rapidly sinking, with the water then over the engine room floor forward, and her crank shaft revolving in the water, and when her stern was raised out of the water and her propeller revolving in the air, and finally by Lumbard, the pilot of the Dumois, who says the Argo sank right astern of the Dumois and that she did not move after the collision.

On this evidence, adduced by both sides, we think, therefore,

there can be no doubt as to the place in the river where the Argo was when the vessels came in sight of each other, and that she was in the middle of the river.

Nor do we think there can be any doubt that the Argo gave the first signal of one blast of her whistle that it was wrongfully answered by the Dumois by two blasts of her whistle, and when the Argo repeated with one blast of her whistle that she ported, as she should have done, and that the Dumois wrongfully starboarded, and this brought on the collision. Nor can there be any doubt that the maneuvers of the Argo under Sec. 4233 of the Revised Statutes and the Rules and Regulations prescribed by the Board of Supervising Inspectors of Steam Vessels were correct, and that the forward movement of the Dumois under a starboard helm was grossly wrong, and was the cause of the collision.

All of which the District Court must have found to have rendered the decree it did render, solely against the Dumois.

2nd. Because under the practice discussed by Justice Brewer, presiding at the U. S. Circuit Court of Appeals for the Eighth Circuit, in the case of The Pioneer Fuel Co. versus McBrier, et als., 84 Fed. Rep., p. 495, this Court ought not to reverse on the merits, for there is no detailed finding of fact upon which it alone could adjudge on the merits, and the only judgment that should have been rendered was to vacate the decree of the District Court and send the case back to have the District Court state the facts and give its conclusions of law, but the facts under the practice discussed in the foregoing case were a matter solely for the lower Court, which practice was unknown to the proctor herein at the time of the decision in the District Court, and the assigning of the errors by cross appellant.

3rd. Because the decree herein, wrongfully, as we believe, awards to the claimant of the Dumois the right to recoup and take from libelant, one half of the amount awarded to Mrs. Hester and Mrs. Blesene, in face of the fact that lebelant had in his answer to the petition claiming the benefit of the limited liability legislation of Congress made a surrender of the wreck of the Argo and her charter money for the trip on which she was lost, and again formerly surrendered her by formal surrender during the trial in the District Court, which surrenders terminated all personal liability of said libellant as to any amounts which the Dumois might be called upon to pay to some third person.

4th. Because the amount awarded as the value of the Argo (to-wit: $15,000) is too small. Wherefore petitioner asks that a rehearing may be granted herein, that the case be sent back to the District Court to find and state the facts with proper conclusions of law and in default of this that the decree rendered in this Honorable Court be set aside and lebellant decreed at least $15,000 against the bond given for the release of the Dumois, and in default of this, that the right awarded the claimants of the Dumois to deduct half the amount decreed to be paid by them to Mrs. Hester and Mrs. Blesene be denied.

And petitioner prays for such other and further relief as he may be entitled to in the premises.

Respectfully submitted,

RICHARD DE GRAY,

Proctor for Petitioner.

PETITION OF ANDERS JAKOBSEN FOR REHEARING.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT.

No. 687.

ANDERS JAKOBSEN, Claimant, Etc., Appellant,

versus

OSCAR M. SPRINGER Et Als., Appellees.

OSCAR M. SPRINGER, Appellant,

versus

ANDERS JAKOBSEN, Claimant, Appellee.

Anders Jakobsen with respect prays for a rehearing in this case on the following grounds:

1. It is submitted that the rules of navigation always presuppose that both vessels are in their proper places when signals for passing are exchanged and when they are required to take action; and that these rules are not applied with strictness to cases in which one of the vessels in collision takes the wrong side of the channel and invades the water of the other. When one vessel disregards its duty by taking the wrong side of the channel, we submit that both are then governed by the paramount rule which requires them to do everything necessary to aviod a collision. The vessel primarily in fault in creating the condition of peril takes all the chances of her wrongful conduct, and if unsuccessful in a

manœuvre undertaken in this situation, she must bear the whole loss, unless the other vessel might have prevented the collision, but made no effort to do so.

2. We further submit, that in the situation of peril created in this case by the wrongful conduct of the Argo, the Dumois was justified in departing from rule 18, as allowed by rule 24 of the Revised Statutes, Sec. 4233, and that having reversed and stopped as soon as danger became apparent, she complied with her whole duty by thus endeavoring to prevent the collision. On the other hand, the Argo might easily have avoided the collision by starboarding or keeping her course, instead of which she ported and that course rendered a collision inevitable.

3. We further submit that the rule governing the fifth situation has no application to vessels approaching each other, head on, or on parallel courses, for by its very terms it applies to vessels approaching each other in an oblique direction only, and impliedly to cases where both vessels are in their proper places at the time.

In conclusion, we submit that the wrongful departure by the Argo from her duty in the first instance released the Dumois from every rule of navigation, except the paramount one to avoid a collision if possible, and that under this rule, she is not chargeable with any fault.

Wherefore appellant prays that he may be granted a rehearing, and that the Court may grant the relief as prayed in the appeal.

Respectfully submitted,

J. D. ROUSE,
WM. GRANT,
Proctors for Appellants.

I certify that the foregoing petition is, in my opinion, well founded in law and fact, and is not filed for the purpose of delay.

WM. GRANT, Proctor.

November Term, 1897.

Tuesday, May 26, 1898.

(Extract from Minutes.)

Anders Jakobsen,	:	
vs.	:	687.
O. M. Springer, et als.	:	

Appeal and Cross-Appeal.

Ordered: That the petition for rehearing filed by the appellant, Anders Jakobsen, and the petition for rehearing filed by the appellee, O. M. Springer, be, and the same are hereby denied.

OPINION.

United States Circuit Court of Appeals, Fifth Circuit.

November Term, 1897.

Anders Jakobsen, Claimant of Norwegian	:	
Steamship, Albert Dumois, Appellant,	:	
vs.	:	
Oscar M. Springer, et als., Appellees.	:	
	:	No. 687.
Oscar M. Springer, Appellant,	:	
vs.	:	
Anders Jakobsen, Claimant, et al.,	:	
Appellees.	:	

Appeal from the District Court of the United States, Eastern District of Louisiana.

Before Pardee and McCormick, Circuit Judges, and Swayne District Judge.

This cause arises from a collision on the night of January 27, 1897, between the steam yacht, Argo, 101 feet long, 6 feet draft, and the Norwegian steamer, Albert Dumois, a freight vessel 210 feet long and 17 feet draft, in a straight stretch of the Mississippi river—half a mile wide, and about eighty miles below the city of New Orleans. The Argo was under special

charter of a newspaper company to make a quick trip to the mouth of the Mississippi river and return. She started about 7 o'clock p. m. on that day and had on board at the time a master who served also as a pilot, an engineer, a fireman, one deckhand, one steward who served also as a cook. The undertaking was under the direction of H. G. Hester, representative of the newspaper company, and his party consisted of himself, A. Faure Bourgeois De Blesine, A. C. Lindauer, newspaper correspondents, and one Cranz [Franz], an invited guest. According to her inspection certificate the Argo should have had one pilot, one engineer and a crew of five men, but as there was great hurry to get her away so as to be present at the mouth of the river at the time of the arrival of a congressional committee to inspect the jetties (which had preceded them on the steamship Whitney), to report said committee's proceedings, Messrs. Hester, Lindauer and Blesine all of whom were said to be familiar with the management of water craft, agreed in case of necessity to lend a hand and act as part of the crew. The Argo sped rapidly down the river without delay or accident until, between twelve and one o'clock in the morning of January 28th, 1897, she came in collision with the Albert Dumois, striking her on the starboard bow ten or twelve feet abaft the stem, damaging herself so badly that she sunk in a few minutes thereafter, her crew and passengers all escaping except Hester and Blesine, who were drowned. The Dumois made a search of an hour or more trying to find the missing men and then brought the remainder of the crew and passengers to the city of New Orleans. On the same day the Dumois reached New Orleans, Oscar M. Springer, owner of the Argo, filed his libel in rem against the Dumois claiming that she was entirely in fault, asking $40,000 damages; shortly thereafter the crew of the Argo filed their intervention claiming various small sums to the value of their personal effects lost by the sinking of the Argo, and thereafter Mrs. Blesine, mother of the deceased Blesine, filed her libel in personam against Anders Jakobsen, who had appeared through the steamship's master and claimed to be the sole owner of said steamship, alleging that said Blesine died without issue, having no wife or father living, leaving her his only surviving parent, and alleging said collision and death were solely caused through the fault, negligence and improper conduct of those in charge of the steamship, and asking for $20,000 damages. After filing his claim Jakobsen, owner of the Dumois, filed a petition claiming the benefit of the limited liability act, asked that the said vessel and her pending freight be appraised and released on bond. Thereupon an appraisal was had and the value of the vessel and freight appraised at $31,333.75, and an order was rendered restraining

further proceedings against said vessel and a monition was published for three months calling on all parties having or pretending to have claims against the said vessel to appear before a commissioner and present the same. Under this monition Mrs. Hester, the widow of H. G. Hester, filed her petition alleging that her said husband had lost his life through the fault of those in charge of the said Dumois and claiming damages in the sum of $20,000. By agreement the libel of Mrs. Blesine was filed as a claim under said monition and to be treated as an answer to the petition of Jakobsen denying fault on the part of the Dumois and asking that all claims be made against said bond and not against the steamship. The libelant, Springer, filed an answer denying all the allegations and surrendering the wreck of said Argo and any charter money that might be due to him and to any and all parties in interest.

On the hearing the District Court decided that the Dumois was solely in fault and rendered decrees against the fund in favor of Springer, owner of the Argo, for $11,000, Mrs. Hester, $5,000, Mrs. Blesine, $2,500, and for the crew of the Argo the following amounts: One Broadhurst, $51.45; Orkney, $20.25; Jewett, $25.50; Brown, $213; Green, $5.00, and Descamus, $4.00. From this decree the owners of the Dumois appealed, claiming among other errors that the Court erred in finding the Dumois in fault and in not finding the Argo solely in fault, and thereupon O. M. Springer, the owner of the Argo, also appealed claiming that the Court erred in not finding a higher value than $11,000 for the Argo.

Pardee, Circuit Judge, delivered the opinion of the Court:

Prima facie a collision between an ascending and a descending steamer, in a straight stretch of the Mississippi river where it is half a mile wide, can only result from gross mismanagment in the handling of both steamers, unless there is intended and carried out a deliberate purpose on the part of the one to run the other down. In case each vessel is anywhere near its proper place they are necessarily too far apart to make a collision possible.

The case in hand is no exception to the rule. It is admitted by the pleadings and shown by the evidence that at the time the Dumois and the Argo first came in sight of each other the Dumois was ascending the river in her proper place near the left bank. That the Argo was at the same time descending the river near the same bank and out of her proper place, which was the middle of the river, is clear by the preponderance of the evidence, supported as it is by the conclusions that necessarily follow from admitted facts.

Lombard, the pilot of the Dumois, who was keeping a lookout on the bridge, Sibitsen, the mate, who was with him also on the watch, each testified that when he first distinguished the Argo he saw her red, green and white lights dead ahead, if anything a little inside, that is a little nearer the left bank than the Dumois.

Larsen, able seaman, who was on watch, and afterwards at the wheel of the Dumois, says that the Dumois was about a half a ship's length from the left bank when he saw the lights of the Argo to the starboard of the Dumois, and this was after some signals had been exchanged.

Nicholas Theodore, pilot on the tug Day Dream, which with its tow was about to land at the lugger landing on the left bank just above where the collision took place, says that the Argo passed so close to him that he could see her color, that she was about fifty feet from him and he was afraid she would run into him.

E. R. Green, cook on board the Argo, says that when he heard the first whistle of the Argo he went up on the steps and looked out and saw all the three lights of the Dumois.

Captain Brown, master and pilot of the Argo, and who was the only man on watch at the time, although Diseamus, seaman, stood by him, admits passing the tug, Day Dream, and giving her a signal of passage, and immediately after admits first seeing the Dumois, but only the white and red lights of that vessel which, he says, were on his port bow.

Diseamus saw only the lights that Captain Brown saw.

One Nicholas Dedes, pilot of the tug Day Dream, says that they were about making a landing on the east bank of the river when the Argo passed blowing one whistle. He does not undertake to say where the Argo was when she first signaled the Dumois.

One Captain Jurisch, on one of the luggers in tow by the Day Dream, testifies to the signal between the Argo and the Day Dream, but gives no satisfactory evidence as to where the Argo was at the time she first came in sight of the Dumois.

From this evidence and from legitimate conclusions from admitted facts, it is clear that at the time the Argo first sighted the Dumois the Argo was out of her proper course, unnecessarily in the path of ascending vessels. This fact being established, it is very easy to reconcile the other evidence, conflicting though it may be, as to the lights, course and management of the respective ships resulting in the collision. The master of the Argo admits that after sighting the Dumois and before changing his course he waited for the Dumois to give the passing signal and that the Dumois not giving the passing signal he himself gave it, one

whistle, meaning to pass to the right, and thereupon, or very soon thereafter, put his helm to port. Notwithstanding the cross-signal of two whistles then given by the Dumois, and the apparent direct change of course of the Dumois in accordance with its signal and the continuance of the Dumois upon its changed course, the master of the Argo, believing in the speed of his vessel and that he could run around and pass to the right of the Dumois in any event, kept his course until he struck the Dumois and sunk his vessel. We quote from his deposition:

"Q. Well, how far away was the boat when you first saw her, before you gave the signal?

A. She was about three-quarters of a mile away, I guess; about 3-4 of a mile the way I was going. I understand it now; yes, sir, I saw her some time before I blew the first whistle.

Q. You understand, of course, which vessel should blow first?

A. It was her place to blow first; that is what I was waiting for.

Q. And when she didn't blow—

A. I blew.

Q. You blew because she didn't blow for you first?

A. Exactly.

* * * * * * * * * * * * * * *

Q. Did you blow for the Dumois after you passed abreast of the luggers at the Canal?

A. Yes, sir; I blew, but I waited some time for him to blow, and he didn't blow; then I blew one whistle as he was on the east shore.

Q. After you passed the Day Dream?

A. Yes, sir.

Q. How far were you past the Day Dream and her luggers when you blew the whistle first?

A. I suppose I was not more than about, very little distance, about five or six seconds, seven or eight seconds.

* * * * * * * * * * * * * * *

Q. Why didn't you blow the signals of alarm when you first discovered the lights of the Dumois?

A. Because I had no business blowing the alarm then, because I was on my right course, and I blew one whistle to him and he answered by two, crossing my signal, which I suppose any man would have altered his signals and stopped his ship coming that close to each other.

Q. You didn't sound that one blast of the whistle until you had passed the Day Dream, when you were less than half a mile from the Dumois?

A. No, sir.

Q. When did you sound it?

A. I sounded the whistle half a mile from the Dumois; that is, the first whistle; I was going very fast, Captain.

Q. You understand the rule to be, then, that when an ascending vessel gives the signal for sides, that the descending vessel may give her signal for sides?

A. Yes, sir. I was waiting for him to do it, and I thought I would have to do it; couldn't wait any longer and so I blew one whistle and he answered me back two whistles, crossing my signal; then I blew one immedately afterwards, one whistle, then immediately afterwards—and ported my helm quick when he blew his two whistles; instead of blowing his two whistles he ought to have stopped according to the rules and backed his ship. I ported my helm right away to get out of the road, immediately after the two whistles were blown by him.

Q. What interval of time elapsed between your first and second whistle?

A. I suppose it was not very long. Let us see—about—not more than about 15 seconds.

Q. Then you put your helm hard aport?

A. I put my wheel hard aport, and the velocity I was going I made sure I would go clear of him. That any sane man would go across my bow I thought it was too much altogether; I have been on this river 40 years, and I never knew anybody to do like that.

Q. Why didn't you stop and back after you saw the Dumois crossing your signal?

A. It was too late then; I thought I could clear her.

Q. It was not too late to port your helm?

A. I ported my helm after I blew the second whistle; she never blew any more whistles.

Q. Why didn't you stop after you blew the second whistle?

A. Because my judgment said I could clear her, with the velocity I was going.

Q. That is the reason you never attempted to reverse, check your speed?

A. No, sir; I made sure I would clear her, that is the reason; you could see yourself when I struck her eight feet from the stem. If that ship was backing when they rung the alarm I would have cleared her two or three hundred feet."

The fault of the Argo is too clear to require further discussion, and it is hardly necessary to add that at the time she was short of her regulation crew (the substitution of passengers to work in case of necessity may satisfy inspection officers but ought not to deceive the Court), she was not constructed so that her speed could be checked when required by the rules of naviga-

tion, or that she could be backed within any reasonable time after sighting danger; and, withal, she was running recklessly in the night time, with substantially only one man on watch, in the path of ascending vessels, trusting to her speed and management to keep out of trouble.

The fault of the Dumois is not so apparent. She was properly officered, manned and equipped, had a regular licensed pilot on board, carried the regulation lights, was in a place where she had a right to be at the time the Argo was sighted. Ahead of her, almost within hailing or signaling distance, the tug, Day Dream, was either landing or had just landed, showing all the lights of such a tow; in addition, coming towards her showing three lights at an even height, the red, green and white lights, was the Argo. From the evidence, the Argo signaled first to pass to the right and ported her helm accordingly; the Dumois either not hearing this signal or not willing to permit the Argo to pass to the right, crossed the Argo's signal and gave two whistles to pass to the left, and apparently immediately put her helm to starboard changing the course of the vessel from straight up the river along the left bank to across the river or towards the right bank. Notwithstanding the failure of the Argo to answer with two whistles, the Dumois kept her course and only stopped and reversed her engines when the collision was apparently inevitable.

Rules 18 and 19, section 4233 R. S., are as follows:

"Rule eighteen. If two vessels under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Rule nineteen. If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way of the other."

According to these rules the Dumois, instead of insisting on keeping her course, should have ported her helm, and she would have avoided the collision. As soon as the Argo ported her helm and showed only her red light to the Dumois and the Dumois had starboarded her helm showing only the green light to the Argo, the vessels were in the fifth position foreseen and provided for by the rules of the supervising inspectors, to-wit:

"This is a situation requiring great caution; the red light of A, in view to B, and the green light of B, in view to A, will inform both that they are approaching each other in an oblique direction. B should put his helm to port and pass astern of A,

while A should continue on his course or port his helm, if necessary to avoid collision, each having previously given one blast of the steam whistle, as required by the rules when passing to the right."

And the Dumois should have put her helm to port to pass astern of the Argo.

As to the value of the Argo we have examined all the evidence. She had had a varied and interesting career and at different times unquestionably had different values. The District Court allowed $11,000 as her value, probably based upon the testimony of Colonel Miller, who testifies that he had had some claim against the owner and some correspondence with him as to the value of the Argo. In November, or December, 1896, the owner expressed himself as willing to sell the Argo for $12,000, but claimed that it would be a tremendous sacrifice, and that whoever bought her at that price would be getting a bargain. He was anxious to sell and would allow one or two thousand dollars commission. The owner himself testifies that the day previous to the collision he had sold a half interst in her for $7,500, and that the sale was not concluded only because the Argo was sunk, and this evidence is corroborated by one Bagley, the intending purchaser. There seems to be no dispute as to this fact in regard to the value of the Argo and, giving effect to the same and further considering the general average of the values of the Argo fixed by the witnesses, we find that the value of the Argo at the time of the collision was $15,000.

The assignments of error not relating to the fault of the vessels nor to the value of the Argo are not well taken.

Hester and Blesine were passengers aboard the Argo, the claim that they were part of the crew of the Argo is not sustained by the evidence.

Finding as we do both the Dumois and Argo in fault, the decree of the District Court must be reversed and a new decree adjusting the damages entered.

The crew of the Argo who lost effects by the collision are entitled to recover only half their damages from the Dumois, and as the Argo was in fault, nothing from their own ship. The Queen, 40 F. R., 694; The City of Norwalk, 55 F. R., 102.

Hester and Blesine being passengers on board the Argo and not in fault, their representaives are entitled to recover full damages from the Dumois, but the Dumois is entitled to recoup half the damages so paid and deduct the same from the amount awarded to the owners of the Argo. The Hercules, 20 F. R., 205; The North Star, 106 U. S., 17.

The Argo, being a total loss, can recover one-half her value from the Dumois less one-half the damages suffered by the Dumois, shown by the record to be $185.00.

Decreed accordingly.

CLERK'S CERTIFICATE.

United States Circuit Court of Appeals, for the Fifth Circuit.

I, J. M. McKee, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing 339 pages, numberd from [a] to 339 inclusive, contain a true copy of the record and all proceedings, including the opinion of the Court in the case, No. 687, of Anders Jakobsen, Claimant, Appellant, and Cross-Appellant, vs. O. M. Springer, et als., Appellees, and O. M. Springer, Cross-Appellant, as the same remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, this 24th day of June, A. D. 1898.

[Seal]

J. M. McKEE,
Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.

UNITED STATES OF AMERICA, *ss:*

President of the United States of America to the honorable the
dges of the United States circuit court of appeals for the fifth
cuit, Greeting:

Seal of the Supreme Court of the United States.]

ing informed that there is now pending before you a suit in
h Anders Jakobson, claimant of Norwegian steamship "Albert
ois," is appellant and Oscar M. Springer *et al.* are appellees
Oscar M. Springer is appellant and Anders Jakobson, claim-
&c., *et al.* are appellees, which suit was removed into the said
it court of appeals by virtue of appeals from the district court
ie United States for the eastern district of Louisiana, and we
g willing for certain reasons that the said cause and the record
proceedings therein should be certified by the said circuit court
of appeals and removed into the Supreme Court of the United
States, do hereby command you that you send, without delay,
to the said Supreme Court, as aforesaid. the record and pro-
ings in said cause, so that the said Supreme Court may act
eon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the
ed States, the 18th day of October, in the year of our Lord
thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 413. October term, 1898. Oscar M. Springer *vs.* Anders bson, claimant, &c. Writ of certiorari.

United States Circuit Court of Appeals, Fifth Circuit.

J. M. McKee, clerk of the United States circuit court of appeals
he fifth circuit, by direction of the judges of said court and in
rdance with the certified copy of the agreement of counsel hereto
ched and made a part of this return, do make return of the
in writ of certiorari that the copy of the record now on file in
office of the clerk of the United States Supreme Court in the
e named in said writ is a true, full, and perfect transcript of
record and all proceedings had in said cause in the United States
uit court of appeals for the fifth circuit as fully and completely
ie same remains of record and on file in my office.

United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereto subscribe my name and affix the seal of said United States circuit court of appeals, in the city of New Orleans, on this the 11th day of November, A. D. 1898.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

343 Supreme Court of the United States, October Term, 1898.

OSCAR M. SPRINGER
vs.
ANDERS JAKOBSEN, Claimant, &c. } No. 413.

It is agreed in the above numbered and entitled case that the certified copy of transcript of record on file in the Supreme Court of the United States may be taken as a return to the writ of certiorari issued by said Supreme Court to the honorable the judges of the United States circuit court of appeals for the fifth circuit, directing them to send without delay to the said Supreme Court the record and proceedings in said above numbered and entitled case, so that said Supreme Court may act thereon as *to* right and according to law, and that a certified copy of this agreement be sent up by the clerk of said United States circuit court of appeals with his return to the aforesaid writ.

Nov. 10, 1898.

J. D. ROUSE,
WM. GRANT, *Proctors for Claimant.*
DENEGRE, BLAIR & DENEGRE,
GEORGE DENEGRE,
For Mrs. Hester, Individually and as Tutrix.
A. M. AUCOIN AND
R. DE GRAY,
Proctors for Mrs. M. Buergois-Blesine.
RICHARD DE GRAY,
Proctor for Oscar M. Springer, Libellant.
ISAAC BROADHURST,
R. ORKNEY,
C. A. DEESEAMUS,
JAMES BROWN,
SAMUEL JEWETT, AND
E. C. GREEN, *Intervening Libellants.*

344 United States Circuit Court of Appeals, Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the above and foregoing is a true, full, and perfect transcript of the agreement of counsel filed in said court in a cause therein stated on the 10th day of November, 1898, as fully and completely as the same now remains of record and on file in my office.

Seal United States Circuit Court of Appeals, Fifth Circuit.

Given under my hand and the seal of said United States circuit court of appeals, in the city of New Orleans, this the 11th day of November, A. D. 1898.

J. M. McKEE,
Clerk of the U. S. Circuit Court of Appeals, Fifth Circuit.

345 [Endorsed:] File No., 16998. Supreme Court U. S., October term, 1898. Term No., 413. Oscar M. Springer, petitioner, *vs.* Anders Jakobsen, claimant, &c. Writ of certiorari & return. Filed Nov. 14, 1898.

346 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which Anders Jakobsen, claimant of Norwegian steamship "Albert Dumois," is appellant and Oscar M. Springer *et al.* are appellees, and Oscar M. Springer is appellant and Anders Jakobsen, claimant, &c., *et al.* are appellees, which suit was removed into the said circuit court of appeals by virtue of appeals from the district court of the United States for the eastern district of Louisiana, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United
347 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

348 [Endorsed:] Supreme Court of the United States. No. 272, October term, 1899. Anders Jakobsen, claimant, &c., *vs.* Oscar M. Springer *et al.* Writ of certiorari. Received July 28, 1899. J. M. McKee, cl'k.

UNITED STATES OF AMERICA, }
Fifth Judicial Circuit. }

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby make return to the within writ by direction of the honorable the judges of said court and in accordance with the agreement of counsel, a certified copy of which is hereto attached and made part hereof; that the transcript of record now on file in the office of the clerk of the Supreme Court in the cause named in the within writ is a true, full, and complete transcript of the record and proceedings of said cause in the United States circuit court of appeals for the fifth circuit as fully and completely as the same now remains of record in my office.

Given under my hand and the official seal of said court, at the city of New Orleans, this 31st day of July, A. D. 1899.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

349 Supreme Court of the United States, October Term, 1899.

ANDERS JAKOBSEN, Claimant, &c., vs. OSCAR M. SPRINGER ET ALS. } No. 272.

It is agreed that the clerk of the United States circuit court of appeals for the fifth circuit may certify as a return to the writ of certiorari issued in the above cause that he has already sent up a true copy of the record in the case of Oscar M. Springer *vs.* Anders Jakobsen *et als.*, No. 139 of the October term, 1899, of this court, and that such return shall be deemed a compliance with the writ.

July 21, 1899.

J. D. ROUSE,
WM. GRANT,
Proctors for Jakobsen.
RICHARD DE GRAY,
Proctor for Oscar M. Springer et al.
GEORGE DENEGRE,
JOSEPH PAXTON BLAIR,
WALTER D. DENEGRE,
Proctors for Mrs. H. P. Hester.

New Orleans, July 25, 1899.

Endorsed: Filed July 28th, 1889. J. M. McKee, clerk.

350 United States Circuit Court of Appeals, Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing one page is a true and perfect copy of the agreement of counsel as to return to the writ of certiorari in the cause therein named as the same remains on file and of record in my office.

Given under my hand and the seal of said court, hereto affixed at the city of New Orleans, this 31st day of July, A. D. 1899.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

351 [Endorsed:] File No., 17,380. Supreme Court U. S. October term, 1899. Term No., 272. Anders Jakobsen, &c., petitioner, *vs.* Oscar M. Springer *et al.* Writ of certiora return. Filed Aug. 3, 1899.

SUPREME COURT

OF THE UNITED STATES.

Clerk Supreme Court, U. S.
FILED
SEP 20 1898
JAMES H. McKENNEY,
CLERK.

ANDERS JAKOBSEN,
Claimant of the Norwegean steamship Albert Dumois,
Appellant,

vs.

OSCAR M. SPRINGER, et als,
Appellees.

OSCAR M. SPRINGER,
Appellant.

vs.

ANDERS JAKOBSEN,
claimant, et als,
Appellees.

~~413~~
139

PETITION FOR A WRIT OF CERTIORARI.

RICHARD DEGRAY,
Proctor for Petitioner.

DETROIT:
CHAS. M. ROUSSEAU & SONS, PRINTERS, 40-44 WEST LARNED STREET
1898.

SUPREME COURT

OF THE UNITED STATES.

ANDERS JAKOBSEN,
Claimant of the Norwegean steamship Albert Dumois,
Appellant,

vs.

OSCAR M. SPRINGER, et als,
Appellees.

OSCAR M. SPRINGER,
Appellant.

vs.

ANDERS JAKOBSEN,
claimant, et als,
Appellees.

PETITION FOR A WRIT OF CERTIORARI.

The petition of Oscar M. Springer, of Detroit, Michigan, sole owner of the late steam yacht Argo, for a writ of certiorari, directed to the United States Court of Appeals for the Fifth Circuit, to bring before the Supreme Court the case of Anders Jacobsen, claimant of Norwegian steamship Albert Dumois, appellant, against Oscar M. Springer et al., appellees; and Oscar M. Springer, appellant, against Anders Jacobsen et al., appellees.

To the Honorable Judges of the Supreme Court of the United States:

The said petitioner respectfully shows to this Court as follows:

That said yacht Argo lies sunk on the bottom of the Mississippi River, about 500 feet from its western bank (R. pp. 110-114), at a point about 80 miles below the City of New Orleans (R. p. 26), and is a total loss. The river at this place is straight, is 2,400 feet wide, and has deep water from bank to bank (Chart Miss. Riv. Commission).

This sinking and loss was the result of a collision, which occurred on a clear, starlight night, between the hours of 12 o'clock p. m. of January 27th, 1897, and 1 o'clock a. m. of January 28th, 1897, between said steam yacht Argo, bound on a trip from the City of New Orleans to the jetties at the mouth of the South Pass of said river, and said steamship Albert Dumois, which was proceeding to the City of New Orleans. With the sinking of said Argo occurred the death of the late Faure Bourgenois de Blesine and the late Harrison P. Hester.

On the 28th day of January, 1897, libel was filed by said Springer in the United States District Court for the Eastern District of Louisiana, in rem, against said steamship (R., p. 1), claiming said collision was solely caused through the fault of said Dumois and claiming damages to the extent of $40,000, and an intervening libel was filed by the crew of said Argo, respectively, claiming damages for the loss of their respective effects lost in said sinking (R. p. 5); and thereupon said Anders Jacobsen appeared and claimed the said Albert Dumois as sole owner thereof (R. p. 8). And thereafter Marie B. Bourgenois de Blesine, the mother of said Faure de Blesine (as the party duly authorized under the jurisprudence of Louisiana to bring such suit), filed a libel in personam against said Anders Jacobsen, claiming the loss of her son was solely caused through the fault of said Dumois, and damages to the extent of $20,000 (R. p. 12).

Thereafter said Jacobsen filed his petition claiming the benefit of the limited liability provided for in the Act of Congress of March 3d, 1851, and in Section 4263 of the Revised Statutes of the United States (R. p. 9), under which the Dumois and her pending freight were appraised (R. p. 12), the vessel released on bond (R. p. 17), and further proceedings against said vessel, freight, and her owner were enjoined (R. p. 11); and thereafter

monition was published directing all persons claiming damages to appear before a Commissioner duly named and make proof thereof, and enjoining proceedings against said steamship and her owner (R. p. 20); and thereafter, by agreement of proctors, said libel in personam of said Mrs. de Blesine was filed and treated in said limited liability proceedings as an answer to said proceedings (R. p. 16). And at a still later date Mrs. Genevive Keplinger Hester, as widow of said Harrison P. Hester, filed claim under said monition, alleging his death was solely caused through fault of said Dumois, and claiming damages at $20,000 (R. p. 30).

At at still later date claimant of the Dumois filed an amended petition in more amplified form, giving the facts of the case as claimed by him, and again praying the benefit of said limited liability laws (R. p. 25), to which Springer filed an extended answer, stating the facts as claimed by him, and among other things in said answer, surrendered the wreck of said Argo and claim for charter money for the trip or voyage on which she was lost, and prayed for the recovery of the value of said Argo as in his libel set forth (R. p. 36), the substance of which amended petition and the answer thereto is given at the end of this petition and the same is made part hereof.

And at a subsequent date Springer again made a formal surrender of the wreck of said Argo and said claim for charter money for said voyage or trip on which she was lost (R. pp. 42 and 43). After the evidence was fully taken the case was heard by the District Court, whose opinion was oral, but delivered in the presence of proctors of all parties, and was to the effect that when the vessels first came in sight of each other the Argo was descending the river in the usual and proper course for a descending steamer, in the middle of the river, and the Dumois was ascending said river toward the eastern bank thereof and about 400 or 500 feet distant therefrom; that the Argo gave the first signal of one blast of her whistle to pass to the right of said Dumois—which was proper—and said Dumois wrongfully crossed signal with two blasts of her whistle, starboarded her helm without any reason for a departure from the "rule of the road" (Rev. Stat. U. S., Sec. 4233), and crossed the course of said Argo, notwithstanding said Argo again gave a signal blast of her whistle, still claiming her right to pass to starboard, and ported her helm to go to the westward, when said Dumois replied with her danger signal, continuing her course in front of said

Argo, causing the latter to strike her on her starboard bow, from which she sank in a few minutes, and said Hester and said Blesine to be drowned, and thereafter said Dumois continued her course up the river until she disappeared from sight, and decreed said collision was solely caused by the fault of the Dumois, and awarded to libellant Springer $11,000 for the loss of said Argo, $5,000 to Mrs. Hester, $2,500 to Mrs. Blesine, and to the crew of the Argo the resepctive sums by them claimed (R. p. 309).

From this decree claimant of the Dumois appealed to the United States Circuit Court of Appeals for the Fifth Circuit, assigning in substance, as error, that said collision was caused through the sole fault of the Argo, and that the amount awarded as her value was excessive (R. pp. 310 to 313).

An appeal was also taken by Springer, claiming the amount awarded him as the value of the Argo was too small (R. pp. 316 to 319), but no appeal was taken by Mrs. Hester or Mrs. Blesine, nor by the crew of the Argo, who were awarded the amounts claimed.

The United States Circuit Court of Appeals in part sustained both appeals, decreeing the damages sustained by Springer in his loss of the Argo were $15,000, and those sustained by the Dumois were $185, and that the collision was caused by the mutual fault of both vessels, and that said damages should be divided, and adjudged that Mrs. Hester recover from the principal and surety on the release bond $3,000 as widow and $2,000 as tutrix to her minor child; that Mrs. Blesine recover from said parties $2,500, the crew of said Argo one-half of the damages by them respectively sustained, and that O. M. Springer, owner of the steamship Argo, do have and recover of said Anders Jacobsen, claimant, and Isadore Newman, surety, in solido, the sum of $7,500, subject to a credit of $92.50 in favor of said Anders Jacobsen and Isadore Newman for one-half of the damages sustained by the Dumois, and to a credit of one-half the amounts hereinbefore decreed in favor of Mrs. Hester and Mrs. Blesine, all of which credits aggregate the sum of $3,842.50, leaving a balance due on this decree in favor of said O. M. Springer, claimant, of the sum of $3,657.50, and that said Springer have execution only for said sum of $3,657.50" (R. pp. 323 and 324).

Of this decree petitioner complains as follows: (1) Because it holds the Argo mutually in fault with the Dumois in causing said collision. (2) Because it directs that claimant of said Du-

mois is entitled to deduct one-half of what he is adjudged to pay Mrs. Hester and Mrs. Blesine from the half damages first decreed to him as half the value of the Argo, and this in the face of the fact that petitioner made surrender of the Argo's wreck and claim for freight in his answer to the aforesaid amended petition (as was done in the case of the Scotland, 105 U. S., p. 24), and again formally surrendered her with all sums due her on the trip on which she was lost, for the benefit of all parties in interest. (3) Because said decree does not increase the value of said Argo to at least $20,000. (4) In case the above should be found untenable, then petitioner says there was nothing for said Court of Appeals to base its decree upon, as there were no facts found by the District Court. Wherefore, for the reasons more fully discussed in a brief herewith filed, and supported by the authorities therein cited, petitioner prays that this Honorable Court will be pleased to grant a writ of certiorari in this case to the United States Circuit Court of Appeals for the Fifth Circuit, to bring up this case to this Honorable Court for such proceedings as shall be proper and just, and for such other and further relief and redress as to right and justice shall seem proper and as the Court is competent to give in the premises.

RICHARD DE GRAY,
Proctor for Petitioner.

UNITED STATES OF AMERICA.
Eastern District of Michigan.
County of Wayne—ss.:

Oscar M. Springer, of Detroit, Michigan, being duly sworn, deposes and says that he has read the foregoing petition and that the same is true to deponent's knowledge, information and belief, and his knowledge is derived from familiarity with the facts therein stated.

OSCAR M. SPRINGER.

Subscribed and sworn to before me this 18th day of August, 1898.

WILLIAM LOOK,
Notary Public, Wayne County, Mich.

I hereby certify that I have examined the foregoing petition and in my opinion said petition is well founded and that the case is one in which the prayer of said petition should be granted.

RICHARD DE GRAY,
Proctor.

SUBSTANCE OF AMENDED PETITION OF CLAIMANT OF THE STEAMSHIP DUMOIS, PRAYING FOR THE BENEFIT OF THE LIMITED LIABILITY ACTS OF CONGRESS, AND OF THE ANSWER OF LIBELLANT THERETO, REFERRED TO IN THE FOREGOING PETITION FOR CRTIORARI, AND MADE PART THEREOF.

Said amended petition stated in substance as follows: (1) That said Dumois, while proceeding on a trip from Port Limon, Costa Rica, to New Orleans, came in collision with the Argo. (2) That said Dumois was properly manned and equipped, etc. (3) That at the time of said collision said Dumois had arrived at a point 80 miles below New Orleans and was proceeding as close to the east bank as it was safe to go, when her lookout, pilot and second mate discovered the lights of a steamer coming down said river close to said eastern shore, "head and head" and a little to the starboard, when the Dumois's lights were burning brightly; and that on discovering said lights—which were those of the Argo—and before any signal had been given by her, said Dumois gave two distinct blasts of her whistle, indicating that she desired to pass the Argo to her left, starboard to starboard, and put her wheel to starboard; that the Argo wrongfully crossed said signal with one blast of her whistle, and then said Dumois immediately repeated her signal and immediately thereafter caused three or more short blasts to be blown to indicate danger, and stopped and backed, but that said "Argo wholly neglected to stop her engines and back, but kept her course and speed until her pilot saw the green or starboard light of the steamship, when he attempted to pass ahead of her by putting his wheel hard aport, which brought the Argo in collision with the steamship, striking her at right angles on her starboard side about 10 feet abaft the stem, from which collision the Argo sank in a few minutes and became a total loss." (4) That the

Argo carried no masthead light, but that all her lights were on the pilot house, the colored on the respective sides and the white light on the forward end of the pilot house, all at the same height and so few feet above the water, which gave them the appearance of being at a greater distance off than they actually were, "tending to mislead (not that they did mislead) an approaching vessel." (5) That owing to the above location of the lights they were not visible until she cleared the tug Day Dream and her tow of luggers coming to landing on the west bank half a mile above the steamship, which compelled her at the time of the first signal to pull from the bank to clear them, as she could not safely go between them and the bank or go closer to the bank, which the pilot of the Argo must have known, as he had just passed the tug and luggers. (6) That the Argo was on the east side of the river, out of her proper course for descending vessels, which was in the middle of the river, and was running at the dangerous speed of 18 or 20 miles an hour, and that her sudden appearance after the clearing of the tug and luggers at a distance of less than half a mile put the steamship in such extreme peril that her pilot was compelled to take instant action to avoid the collision, but the pilot of the Argo made no effort to avoid it by stopping the Argo's engines and backing her or by keeping her course or putting his wheel to starb'd. (7) That the Argo was not sufficiently officered and manned, the only deck officer being Brown, who acted as master, pilot, mate, wheelman and lookout, and that, owing to the multiplicity of his duties he did not give proper attention to the navigation of his vessel. (8) That the lacking of two men to complete the crew for this trip to the jetties, the master took Hester and Blesine, who were not seamen; that said Hester took the management and had charge of the Argo for the New Orleans Picayune, which had chartered her for the voyage, and as such had the right to give all orders, both of whom were drowned. (9) That the said collision was in no way caused by the fault of said steamship and was caused by the fault of the owner of the Argo and said Hester in not properly manning her, and by those charged with her navigation. (10) That though said collision occurred without fault, privity or knowledge of said petitioner, Springer, as owner of said Argo, has libeled the Dumois, claiming $40,000 damages, and the mother of said Blesine has filed a libel in personam claiming $20,000 on account of his death, and the wife of said Hester threatens to file libel claiming damages for his loss of life, and the crew of said Argo have intervened and claimed

various small amounts (which are mentioned), and petitioner fears other claims will be made. (11) That under the circumstances petitioner desires to obtain the benefit of Sections 4283, 4284 and 4285 of the United States Revised Statutes and amendments thereof and supplements thereto, and to contest his liability and that of said steamship to any loss or damages resulting from said collision. (12) That for the purpose of obtaining the benefit of the above limited liability law offers stipulation for the value of said steamship and her pending freight for the benefit of those who have sued and those who may hereafter sue, etc. And affirming the prayer of his original petition, and that he may have the benefits of all proceedings theretofore had, further prayed that the Court decree said steamship was not in fault in causing said collision, and that all claims asserted or brought against him and said steamship may be rejected with costs; but in case it should be decided both vessels were in fault, that the damages done said Dumois be allowed as an offset against any sum allowed in favor of libellant to the extent claimed in his answer to the libel filed herein, and that in case full damages should be awarded against said steamship in favor of the intervening libellants and the legal representatives of said Blesine and said Hester, that then the said Oscar M. Springer may be decreed liable for one-half of all such damages, and that any judgment he might recover against petitioner and his said steamship may be decreed to be compensated and extinguished to that extent, and for general relief.

To the original and the foregoing amended petition the libellant Springer, in substance, responded as follows: (1) Admitted said collision did occur in the river at the place stated. (2) Denied said steamship Dumois was properly manned and equipped, and averred her officers and crew were unskillful and negligent. (3) Admitted that prior to the said collision said Dumois was coming up the Mississippi River, but about 450 or 500 feet from its eastern bank, at 10 miles an hour; and denied that her lookout, or mate, or anyone else, discovered the lights of the Argo close to the east bank of said river, or to the starboard of said Dumois; denied that said Dumois had a proper lookout forward, that there was a competent pilot and mate on the bridge keeping a vigilant lookout; denied that before any signal was given by said Argo two distinct blasts of said Dumois's whistle were given; denied that said Argo wrongfully crossed the signals of said Dumois, or crossed her signals at all, and averred that said Argo was going down said river at the point stated in

her proper place in the middle of the river, and when she had reached a point three-quarters of a mile distant her master and pilot (who was steering), and her lookout on watch, noticed the red and white lights of a steamer ascending said river in the proper place for such ascending vessel, and when she had approached within about half a mile of the Argo, still in the middle of the river, and before said Dumois had given any signal whatever, said Argo gave one distinct blast of her whistle, indicating she would keep her course and pass on said Dumois's left, when, not heeding said Argo's signal, said Dumois crossed the same with two blasts of h[illegible] whistle, crossed the stream and the course of said Argo, shut out her red and showed her green light; that immediately upon said Argo's signal being crossed, said Argo again blew one blast of her whistle and put her helm hard aport to go wide clear of said Dumois, as in the judgment of her master and pilot it was best for all for her to do, but said Dumois continued and blew her danger signals, but only a second or two before the Argo struck her on her starboard bow, and thereafter said Dumois continued her course up the river for half a mile or more before she stopped, going rapidly past the Argo, which sank in four minutes, becoming a total loss and causing the death of Hester and Blesine, but no damages were done to said Dumois. (4) Admits said Argo carried no masthead light, and that her lights were on the pilot house, but denied they were on the same plane and that they were only a few feet above the water, and that they were misleading, and averred they were in all things the proper lights for a vessel of the Argo's class and placed according to law, and were burning brightly. (5) Denied the lights of the Argo were not visible until she had cleared the tug Day Dream and luggers landed on the east bank of the river half a mile above said Dumois; denied said Dumois was compelled to pull out from said eastern shore to clear said luggers, and averred that if said Argo's lights were not seen it was the fault of the pilot of said Dumois; that there was fully 300 feet between the course of said Dumois and said luggers, which were landed at the eastern shore, and that at the time the course of the Argo was to the westward of that of said Dumois and in the middle of the river, and had said steamship not wrongfully left said eastern shore and crossed the Argo's course no collision would have been possible. (6) Denied the Argo was on the eastern side of the river and out of her course in the middle of the river, and that her speed of 18 miles an hour was dangerous or excessive; denied that her appearance was sudden and

that she could not plainly and distinctly have been seen on that clear, starlight night a distance of less than half a mile; denied that said Dumois was at any time put in extreme peril by any action or fault of the Argo, and that her pilot was compelled to take instant action to avoid collision, and averred through want of skill the pilot of the Dumois took just the action to bring about the collision that did occur, by refusing to heed the two separate signals of one blast of said Argo's whistle, and crossing her signals and course, as already described; all of which was sudden, wrong and unanticipated, and put the Argo in extreme peril, and the judgment of her master and pilot in this situation was that the very best thing he could do, owing to the speed with which he was going with the current, and owing to the fact that the Argo could not be stopped and backed in less than 10 minutes, was to put his helm hard aport, proceed with full speed and pass in front of said Dumois, and this would have been successful had said Dumois, after wrongfully crossing the signals and course of the Argo, stopped when she blew her danger signals; that at the time the lights of the Argo were burning brightly and were visible more than two miles, and if not seen at less than half a mile, as alleged, it was solely due to the insufficient lookout. (7) Denied that said Argo was not sufficiently maned; denied she did not have a skillful and competent lookout on duty; denied that there were any duties that rendered Brown (the Argo's master and pilot) incompetent to give, and that he did not give, proper attention to the direction and steering of said Argo; and averred said Argo was not a large, ocean-going steamer, but a small pleasure yacht, 100 feet long and of 48 gross and 24 net tons burden, and only licensed to navigate lakes, harbors, sounds and rivers, and was engaged only on a short trip from New Orleans to the jetties and return, and said Brown was entirely competent to give and did in all things give proper attention to her navigation, and averred the full crew of said Argo was a master and pilot, one engineer and five crew, as her certificate of inspection will show, all of whom were on board of said yacht at the time, the said Hester and said Blesine acting as deckhands, for which they were competent. (8) Admitted said Hester and Blesine agreed to go and act as deckhands, for which they were competent; admitted said Hester had charge of the trip for the charterer with direction of said Argo, and that said Hester and said Blesine lost their lives. (9) Denied the collision was in no way caused by the fault of said Dumois, and averred it was solely caused by her fault, and

that she alone was responsible therefor and for the loss of said Argo and said Hester and Blesine. (10) Denied the collision happened and said loss and damage occurred without fault of the Dumois, and admitted the owner of the Argo had libeled the Dumois for $40,000 for her total loss, that Mrs. Blesine had filed libel in personam against the owner of the Dumois claiming $20,000 damages for the loss of her son, and that the other parties named had filed intervention claiming the amounts stated, for loss of personal effects. (11) Denied that said Dumois was entitled to the benefit of the limited liability provisions of the Revised Statutes of the United States. (12) Admitted the filing of said petition claiming the benefits of said provisions of said limited liability, and that said clamant had given bond for the value of said steamship and pending freight, and that she had been released.

And further answering said, that in case the Court should find said Argo was in any manner in fault in causing said collision, then he said that at the time thereof said Argo was under charter to The New Orleans Picayune Newspaper Co. to make a trip from the City of New Orleans to the jetties at the mouth of the Mississippi River and return for the price of $100, and was at the time under the management of said Hester, who was on board of her as said company's representative, no part of which had been paid, as said trip was broken up by said collision before the same was half completed, and that by said collision said Argo was sunk and completely lost; that there is no personal liability against respondent for any loss or damage to the Dumois, if any occurred (which is denied), nor to Mrs. de Blesine for the loss of her son, nor to said Mrs. Hester for the loss of her husband, nor to the other parties, nor was there any liability on the part of the Argo to said parties, or either of them, beyond the value of said Argo as she lies sunk at the bottom of the Mississippi River at said point of collision; and in and by said answer surrendered her as she lay sunk as aforesaid, any claim he might have for said charter money, for the benefit of all parties who may in any manner have any claim against him or the said yacht Argo, and prayed for damages as in his original libel set forth.

T. A. No. 139 943 S.C.

Brief of De Gray for Petitioner

SUPREME COURT

Filed Sept. 20, 1898.

OF THE UNITED STATES.

Office Supreme Court, U. S.
FILED
SEP 20 1898
JAMES H. McKENNEY,
CLERK.

ANDERS JAKOBSEN,
Claimant of the Norwegean steamship Albert Dumois,
Appellant,

vs.

OSCAR M. SPRINGER, et al,
Appellees.

OSCAR M. SPRINGER,
Appellant.

vs.

ANDERS JAKOBSEN,
claimant, et ale,
Appellees.

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BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

RICHARD DEGRAY,
Proctor for Petitioner.

DETROIT:
CHAS. M. ROUSSEAU & SONS, PRINTERS, 40-44 WEST LARNED STREET.
1898.

SUPREME COURT

OF THE UNITED STATES.

Brief in support of petition for a writ of certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit, to bring before said Supreme Court the case entitled, in said United States Circuit Court of Appeals, as follows:

ANDERS JAKOBSEN,
Claimant of the Norwegean steamship Albert Dumois,
Appellant,

vs.

OSCAR M. SPRINGER, et als,
Appellees.

OSCAR M. SPRINGER,
Appellant,

vs.

ANDERS JAKOBSEN,
claimant, et als,
Appellees.

STATEMENT.

The issues of law and fact in this case are so fully stated in the petition herein praying for the issuance of said writ of certiorari,—the latter in the substance of claimants amended petition praying for the benefit of the limited liability acts of Congress, and libellants

answer thereto, given at the end of said petition for certiorari and made part thereof, that we will not here repeat them, but will at once proceed to a consideration of said issues, and in doing so will first ask attention to matters of law, and then to matters of fact.

ARGUMENT AS TO MATTERS OF LAW.

Conceding for the sake of argument, that both vessels were in fault in causing the collision (which of course we deny) both having been surrendered under the limited liability provisions of the Revised Statutes of the United States, can the principal and surety on the bond, given for the release of the Dumois and her pending freight, correctly, be permitted to deduct half the amounts they are decreed to pay Mrs. Hester and Mrs Blesine from the amount decreed as half the damages sustained by Springer, owner of the Argo?

It is too well settled to require the citation of authority, that in a case of collision of vessels, and a proper surrender of the property in fault, the personal liability of the owner is confined to the property surrendered at the *end* of the voyage, and any recovery that may be had, to what ever may be realized from said property so surrendered.

The law in this country and in England on this subject is entirely different. There the owners liability is confined to the value of the property just before the disaster, here it is confined to the value of the property after the disaster. In the case of the Benefactor, 103 U. S. p. 246 the court said:—

"In England, the value of the vessel immediately before the collision was regarded as the true criterion of liability. But the English law is different from ours. It makes the owners liable to the extent of the value of the ship at the time of the injury even though the ship itself be lost or destroyed at the time; whereas our law follows the admiralty rule, limits the liability to the value of the ship and freight after injury occurred; ~~so that if the ship and freight after injury occurred~~; so that if the ship is destroyed the liability is gone; and whether damaged or not damaged, the owners may surrender her in discharge of their liability."

In The City of Norwich 118 U. S. p. 490, the court said:

"We held in Norwich vs. Wright, and we have held and decided in many cases since, that the Act of Congress adopted the rule of the admiralty law as distinguished from that of the English law on this subject; that the value of the vessel and freight after, and not before the collision is to be taken."

And in the case of The City of Norwich 118 U. S., p. 468, and in The Great Western 118 U. S., p. 520, it was decided the owner, claiming the benefit of the limited liability law, need not surrender a policy of insurance upon the vessel surrendered, or monies collected thereon; that the same did not enure to the benefit of parties who may have suffered by the disaster. And the reason is most apparent, viz., because the owner's liability is confined to the value of the wreck, after, and not before the collision, and as it lay sunk at the bottom of the sea or river. In the language of the court in said City of Norwich 118 U. S., p. 492:

"The proper value of the steamer was taken in the court below, namely, the value which she had when she

had sunk, and was lying on the bottom of the sea. This was the termination of the voyage."

Hence, if the vessel is a total loss and nothing is recovered from the wreck, there can be no recovery by those who have suffered by the disaster.

The application of this law to this case is this. There is no personal liability on the part of Springer, because he has surrendered the wreck of the Argo and all claim for freight; and there can be no recovery therefrom, because there was no freight due, and the vessel was a total loss from which nothing can be recovered. There is no personal liability on the part of Jakobsen, the owner of the Dumois, because he has surrendered her and her pending freight and given bond for the appraised value thereof, to-wit, $31,333.73, and costs, making a total of $32,500 (R. p. 18), and this is the only liability in the case. How then could the Court of Appeals, rightfully, decree that the Dumois, being condemned to pay full damages to Mrs. Hester and Mrs. Blesine from the above bond, decree that the principal and surety on said bond could deduct one-half of what they were condemned to pay said Mrs. Hester and Mrs. Blesine, from the amount they owed Springer? Certain it is, that Mrs. Hester and Mrs. Blesine could not recover the whole, or half, or any part of the damages they might have suffered, from Springer (even though the Argo might have been in fault), because he has surrendered the wreck and claim for freight, and because he was not obliged to surrender his suit for damages to secure the benefit of the limited liability provided by law, and for the reason that his suit for damages is a claim for the value of the Argo as she existed before the collision, and

not after she was sunk on the bottom of the river. Nor could Mrs. Hester or Mrs. Blesine recover anything from the wreck of the Argo, because it has no value. In fact there can be no recovery in this case by anyone, except from the bond given for the surrender of the Dumois. Yet under the decision of the lower court, Springer's property (one-half the value of the Argo, less half the damages sustained by the Dumois in the collision, and no part of which—as above stated—he was obliged to surrender, is taken from him to pay part of a debt which he does not owe because of said surrender, and which said bondsmen do owe. In other words, the damages sustained by the Dumois in this collision was $185.00, and if she and said Argo were both in fault, one-half of this amount is all the Argo (Springer) would owe the Dumois (Jakobsen), and the balance of the half of the damages sustained by the Argo are the property of her owner, Springer, half of which the decree wrongfully takes from him and hands over to the Dumois bondsmen to reimburse them in part, a debt which the Dumois alone owes.

It is true it was decided in the case of the North Star 106 U. S., p. 17, a case of collision where both vessels were in fault, and one was lost and her wreck was surrendered, that the owner of the lost vessel could only recover one-half of his damages, and the evident reason was, that, both being in fault the surviving vessel only owed half the damages. But that was a case solely between owners of colliding vessels, both in fault, and it has never been decided that the owner of one vessel can take from the owner of the other vessel one half of what the former has to pay to a third innocent person, and

we apprehend it will never be so decided, and for the reason that the surrender of the sunken wreck on the bottom of the river, from which no realization can be made, absolutely put an end to all liability of the owner of the property surrendered. Surely the contrary would be destructive of the law that the liability of owners of vessels is confined to the value of the property surrendered at the end of the voyage.

We are also aware of the fact that it was decided in the collision case of The Washington and The Gregory, 9 Wall. — and in other cases since, that both vessels being in fault in causing damages to an innocent party, both were liable, and that the damages should be equally apportioned, with the right reserved to the libellant to collect the entire amount from either in case of inability of the other to respond, but that was not in any sense this case, and is no authority for the party who has paid full damages to recover back from the co-wrongdoer half the amount so paid, or to detain it out of what he may owe such party, and certainly is not an authority, when the debt so paid in full could not be collected in whole or in part from the first party. In that, and in the other cases where that case was followed there was no surrender of the offending vessel, and the doctrine of the limited liability provided by Congress was not invoked, discussed or passed upon.

Again. The decision of the Court of Appeals is in effect, that one wrong-doer can recover from his co-wrongdoer, one half of what he has been compelled to pay. This is not the law.

In Addison on Torts, (edition of 1891) p. 21, the law on this subject is stated as follows:

"No contribution can be claimed, as between joint wrong-doers. If therefore, a plaintiff, who has recovered a judgment against two defendants for a joint trespass, levies the whole damages on one of them, that one has no claim for a moiety of the damages from the other."

And surely, if he cannot recover it, he cannot detain it from what he owes, and especially not in this case, for the officer and the pilot of the Dumois are presumed to have known the law and that her movement to port with a starboard helm was in violation of the Act of Congress and the Regulations of the Board of Supervising Inspectors of Steam Vessels, and would in all probability produce a collision, if the pilot of the other vessel obeyed that law, as he did.

Another question of law in this case is, can the decree of the Circuit Court of Appeals, in the absence of any findings of fact and conclusions of law based on said facts, by the District Court, be sustained? In other words is there anything which the Cour of Appeals can review?

This question was discussed by Mr. Justice Brewer, presiding at the Circuit Court of Appeals for the Eighth Circuit, in the case of the Pioneer Fuel Co. vs. McBier et als., 84 Fed. Rep., p. 495, and we submit the point upon the discussion there had.

ARGUMENT AS TO MATTERS OF FACT.

Two questions will be here considered, to-wit: those that relate to the fault of the collision, and, second, those that relate to the value of the Argo.

First, who was at fault in causing said collision? In discussing this question it will be necessary to ascertain

where the vessels were in the river when they first came in sight of each other, what they respectively did to avoid coming together, and where they were in the river when they did collide. And in doing so, we will give the evidence on each side, and also notice what we think are errors in the opinion of the Court of Appeals.

At the outset it is proper to remark, that all of the witnesses when speaking of distances up and down the river, speak of them as they appeared in the night time, when the estimates, at best are mere guesses, and such guesses even when quickly made in broad day (and here they were quickly made in the night time) and without the assistanee of mile posts or other monuments, are of little value, and ever so much less when made in the night time. But these observations do not apply with equal force when witnesses are speaking of location (and not distances) between two known or given objects, where both such objects are in sight, and the point estimated, and from which the observation is made, is between two such known objects. For instance, a party might well be able to tell approximately, when on a vessel in the middle of the river, whether she was in the centre or not, because there are two objects—the banks of the river on each side—to guide and assist the judgment, while in looking ahead, the observer has no known objects to assist him, and as said before, any estimate of that kind is but a guess, and probably far from correct.

WHERE WERE THE VESSELS IN THE RIVER WHEN THEY FIRST CAME IN SIGHT OF EACH OTHER?

On the Argo, James Brown, her master and pilot, was on watch and at the wheel steering, and immediately alongside of him, and also on watch, at the time the Dumois lights were discovered, was his lookout, Desemus, while those on watch below were Orkney, the engineer; Broadhurst, the fireman, and Green, the cook, though not on watch was in the cabin and awake. Those not on watch and in their berths at the time of the collision and prior thereto, were Blesine, Hester, Lindauer and Cranz. The evidence of the above parties on the above point (except Hester and Blesine, who were drowned), and Cranz, who has not been called by either side, is as follows:

At page 48 Brown was asked and said as follows:

Q. Whereabout in the river were you when you first noticed the steamer which came in collision with you, where was your boat, in what part of the river? A. I was in the middle of the river.

Q. Were you going down stream? A. Yes, sir.

And at page 49 said:

Q. Over what bow of your vessel did you see? A. Over the port side of our bow.

Again at page 50, middle:

Q. In what part of the river were you when you first noticed him? A. In the middle of the river.

Q. Heading which way? A. Down stream.

And at page 53 he said:

Q. Well, how far away was the boat when you first saw her before you gave the signal? A. She was about three-fourths of a mile away. I guess about three-fourths of a mile the way I was going. I understand it now.

Yes, sir. I saw her some time before I blew the first whistle.

DESEMUS was asked, and said, at page 79, as follows:

Q. Where were you just before the collision occurred —on what part of your boat? A. I was with Captain Brown, standing by his side on the bridge that acted as the pilot house—it was above the pilot house.

Q. Did you pass any other boats before you came —before the collision occurred, a short time before? A. Yes, sir.

Q. What boats were they? A. I couldn't say the name, sir—there were some steamers, and I looked at the lights, one that I passed—there were some small craft with it.

Q. Where were they, on what part, what side of the river? A. On the east side, New Orleans side.

Q. Whereabout in the river were you when you passed these boats? A. I should judge in the center.

Q. What kind of a night was it? A. It was a clear night.

Q. Could you see the banks of the river without difficulty? A. You could see the trees, dark shade.

Q. When you passed this—you say you passed something on the left, east bank? A. Yes, sir; I thought it was the Day Dream or some of them small boats towing luggers.

Q. Did you give any signal to these boats? A. Yes, sir, I gave one—at least Captain Brown gave one to them.

Q. About that time did you notice any other lights anywhere, if so, where? A. Shortly after we passed the

last craft I saw the light, I was on the outlook, I saw a red and white light.

Q. You were on the outlook? A. Yes, sir.

Q. What bow of your boat did you see them over? A. I saw them on my left hand.

Q. Over your port bow? A. Yes, sir.

Q. Where was this red and white light that you saw in reference to the bank of the river—what bank was it on? A. On the New Orleans bank, on my port side.

Q. How far off was it when you first saw it? A. About three-fourths of a mile.

Q. Do you know whether Captain Brown saw it the same time that you did or about the same time? A. I think he did, because as soon as I saw them I said, Captain, there is a vessel coming; he said, yes; he waited a little while, I expected to hear the vessel blow, she didn't blow, so he blew one blast of his whistle.

The court says this witness was not on watch, or rather that Brown was the only man on watch at the time the vessels came in sight of each other (pp. 334 and 337), even conveying the idea that there was neither an engineer running the engines, or a fireman feeding the fires to make the steam to run them, but this is clearly wrong. Desemus was the deckhand on the Argo, and Brown was asked, and said, at page 49, as follows:

Q. Was any one on watch with you on deck? A. Yes, sir; the deckhand was right alongside.

And at page 57 said:

Q. Where was Deseamus? A. He was right alongside of me at the wheel; the wheel was abaft of the pilot house on deck; I was standing right up there.

Q. You had the wheel? A. Yes, sir; always,

Q. And Desemus was standing alongside of you? A. Yes, sir.

Q. How long had he been there? A. Off and on since we left; I kept him there in case I wanted to send him anywhere; he was lookout too. * * at page 66 said.

Q. At the time the collision occurred then, was there a full complement on watch in running the boat? A. Yes, sir; the lookout, and cook he was about; myself, engineer and fireman.

Q. Where was the lookout stationed? A. He was up on deck, on the upper deck along side of me. He was right up alongside of the wheel. (From which place he had the very best and an unobstucted view.)

And the above evidence, apart from being contradicted by no one is supported by Desemus himself, who after stating he was deck hand (p. 79) and telling how Captain Brown gave a signal to the Day Dream, was asked at page 80.

Q. About that time did you notice any other lights anywhere, and if so where? A. Shortly after we passed the last craft, I saw a light, I was on the lookout, I saw a red and white light.

Q. You were on the lookout? A. Yes, sir.

ORKNEY, the engineer's evidence on this subject, though not so direct is still clear, for just previous to the signal that preceded the colllsion he had come up from the engine room and looked out and saw lights of the tow (Day Dream) opposite the Argo on the opposite bank of the river. At page 69, middle, he states this matter as follows:

Q. When you came up, as you have stated, and looked out and saw the Day Dream, or the Day Dream's

tow? A. I saw a tow, I didn't know what vessel it was.

Q. How far were you from that tow with reference to the bank of the river—were you close into the side the Day Dream was, or on the opposite side, or in the midde? A. No, I guess we must have been in the middle, because we were so far away; I could make out it was a tow by the lights, but I didn't see the vessel at all.

Q. The night was clear? A. Yes, sir, it was a good night for seeing lights.

GREEN, the cook and steward, was asked and said, at page 100:

Q. Mr. Green, at the time you heard the cross signal and you looked out, could you tell in what part of the river the Argo was, whether she was in the middle of the river or whether she was near the eastern bank or near the western bank? A. She appeared to me to be in the middle of the stream, or might be, according to my idea, a little closer to the west bank than to the eastward. * * *

Q. You could see the banks? A. I could see either bank, I could see a long ways.

Q. Now after you got into the yawl boat and the Argo had sunk could you see the banks of the river then? A. Yes, sir; we were closer to the west bank than to the east bank (confirmed by the finding of the wreck 500 feet from the west bank), and we started for the west bank, it being the closest, to try to get there with the yawl boat.

This evidence the court also failed to heed or notice, and while it is true Green after hearing the cross signal of the Dumois and seeing her "apparently crossing the river" (Rec. p. 96) said he saw both signal lights when he

put his head out of the trunk, as he certainly could have done if she was there on a starboard helm, it is equally true he said the Argo was in the middle of the river, and had the Dumois not changed her course to show both signal lights to Green when he first looked out—his statement as to lights indicates that the Dumois was farther from the east bank than is claimed.

BROADHURST, the fireman, was in the fireroom and saw nothing until after the collision occurred.

Such is the evidence of those on board the Argo who made any observation on the position of the vessels prior to the collision.

On the Dumois it is claimed, that owing to the time for changing watches having arrived, and the ship having approached port, all four seamen and the carpenter were on deck (p. 264), one, Johnson, was on lookout, two were coiling up ropes on the forecastle, one, Larsen, took the wheel after the signals were crossed from Wessel (p. 302), yet only Larsen, who took the wheel from Wessel, the pilot, Lombard, and Sabitsin, the second mate, have been examined, and why the others, and especially Johnson, the lookout, and Wessel, the man at the wheel when the signals were crossed and the collision was imminent, and the carpenter have not been examined has not been satisfactorily explained.

It is true the master, Ruatad, at page 212, has tried to account for Johnson not being called, by saying he (Johnson) "wanted me to pay him to stay; he wanted me to bribe him to stay," but surely this is no excuse for not examining him de bene esse, if it is true he was about to go away, and prosecuting him if he swore falsely for perjury in the courts that are open as well to the

Norwegian as an American. But there is no excuse whatever for not calling Wessel, Neilsen, or the carpenter, all of whom could have thrown light on the facts of this case. Their not being called is a strong presumption that their evidence would not support the defense in this case, and would support the claim of the libellant.

LUMBARD, pilot of the Dumois, after stating she was 210 feet long (p. 239), that she was near the eastern bank a short distance below the New Canal—a quarter or a half mile—(p. 240) when he discovered the Argo's lights, was asked and said at page 241 as follows:

Q. What lights did you see at the canal, or near the canal? A. I saw a lot of bright lights—white lights.

Q. Did you see the side lights and white light of the Argo? A. I saw her red, green and white lights.

* * * * * *

Q. When you first discovered lights near the canal, what impression did it make on you? A. That she was one of the lugger boats, tugboats, making up a tow there.

Q. When did you become convinced that the vessel was descending? A. Not until after I had blown my two whistles and he answered me with one, when I was convinced she was coming down the river under way. * * * *

Q. Why did you blow two whistles? A. Well, because I wanted to let them know I was coming up and also thinking she was coming close along the bank I naturally gave her two whistles. I was out—

Q. How far were you from the east bank when you blew these two whistles? A. I should judge about a ship's length (210 feet).

Q. Where were those lights of the luggers at the new canal at the time? A. They were right at the canal, as near as I can judge.

Q. Did they appear to be dead ahead? A. After I hauled out they were a little inside, when I first sighted them, they were dead ahead.

Q. Why did you haul at that time? A. I hauled out to clear the luggers, and also the steamer that was there.

And at page 242 said:

Q. You say when you first discovered the lights of the Argo you were about a ship's length from the east bank of the Mississippi river? A. Yes, sir.

Q. State whether you saw all the lights of the Argo dead ahead or otherwise? A. They were dead ahead—if anything a little inside of us.

And at page 243 said:

Q. From seeing three lights on the Argo at the time you blew your two whistles, can you say where the Argo must have been or was in the river? A. She was close to the canal—close to the lugger landing.

Q. Close to which bank of the river? A. To the east bank of the river.

NICHOLAS SABITSIN, second mate of the Dumois, who claims he was on watch and on the bridge of the Dumois with Pilot Lumbard, places the Dumois double the distance (at one time 420, and another time 500 feet, p. 265) from the east bank, and the Argo dead ahead of her, when the vessels first came in sight of each other. He was asked and said at page 258 as follows:

Q. Where was the Dumois in the river at the time the lights of the Argo were first discovered? A. She was close to the east bank, very close. * * *

Q. How far was the Dumois from the Argo when you first saw her lights (p. 259)? A. I should judge about half a mile when we discovered it to be a steamer. * * *

Q. When you first saw the Argo's lights did you see all three at the same time? A. Yes, sir.

Q. State whether the Argo's lights were dead ahead when you first discovered them? A. Yes, sir, a little inside of us near the bank.

And at page 265, was asked and said:

Q. How close were you to the bank? A, I disremember, we were about a couple of ship's lengths from the bank.

Q. How long is the ship? A. About 200 feet.

Q. And this boat, this steamer's lights that you saw inside were closer to the bank than you were? A. Yes, sir. * * *

Q. Wasn't she, according to your notions, closer to the east bank than the luggers? A. No, sir, she was not—he was outside the luggers.

Q. The luggers had not made a landing in there yet, had they—they were turning in there to make a landing—they had not yet gotten to the bank? A. They got pretty close to the bank, closer than him—mostly in the bank.

And at page 274 was asked and said:

Q. You say you were coming up the east bank? * * * A. Yes, sir.

Q. Was it necessary for you to turn out into the

stream to pass the luggers? A. No, sir, I don't think that was just the thing for him to be close to the bank.

Q. And the Argo was closer into the bank than the luggers? A. No, sir.

Q. How far? A. She was farther out than they, nearer on.

Q. Nearer to your line? A. Yes, sir.

Q. What lights did you see? A. I saw all her lights; she was heading right at us.

Q. Suppose two ships are approaching each other half a mile distant, and you see all the lights, side lights and masthead lights, doesn't that indicate to you that you are meeting head on? A. Yes, sir.

Q. Then you saw the Argo approaching you head on? A. Yes, sir, mostly. * * *

Q. Those lights you saw, all three? A. Yes, sir.

Q. That indicated to you that you were coming head and head? A. Yes, sir.

And at page 275, he was asked and said:

Q. And you were about 500 feet from the bank or 600? A. Five hundred, I should think. * * *

Q. They (the luggers) would be 50 feet? A. Fifty feet, the two of them. * * *

And at page 276, was asked and said:

If you were coming 500 feet from the bank, and there were luggers 50 feet wide, that would leave about 450 feet.

Q. Don't you know there was 450 feet? A. I said about.

Q. Your judgment was as you stood on the bridge and looked up the river and saw these luggers on the bank of the river as you came up, that there would have

been about 450 feet of space between your ship and the luggers as you went up stream, that is if you had kept your course, right up? A. Yes, sir.

LARASEN, a steersmen on the Dumois, whom the court pronounces "an able seaman" (334), but who said he did not know "that when one boat blows two signals and the other boat blows one signal that indicates that the boats are about to come together" and who in fact did not know what cross signals were, and yet was put at the wheel in this position of the vessels in thc place of the man removed, was asked and said at page 297 as follows:

Q. How was the wheel of the Dumois at the time you relieved the other man? A. It was lying starboard.

Q. What was the course of the vessel at that time? A. We had no light in the binacle, we steered after the pilot's command and the vessel was swinging, turning, moving.

Q. Which way was she in relation to the banks of the river? A. She was swinging from the bank to port.

Q. From which bank of the river was the Dumois at this time, how far from it was she? A. It was the east bank I think they call it, I am not sure, it was the bank on the starboard side, about half a ship's length away.

Q. Did you see the lights on the approaching steamer? A. Yes, sir.

Q. When did you first see them? A. A minute or a minute and a half after I had taken the wheel.

Q. In what position was she approaching, was this approaching vessel at that time head on, or how was she

in what position did you have her when you first saw her? A. On the starboard.

Such is the evidence of those who were examined from the Dumois, and, in fact, all the evidence of the claimants on this point, except that of Nick Theodore, master of the tug Day Dream, (whose evidence will be noticed hereafter) who could not tell the width of the river anywhere and whose statements are so confusing and uncertain, that they would indicate the party was incompetent or demented, and are of no value in this discussion.

And if all of the foregoing evidence—that of both parties—stood alone it would be hard to determine whether or not the Argo was at said time in the middle of the river or near the eastern shore—210 or 500 feet from the bank—but fortunately for the Argo, the evidence of her crew is fully sustained by parties who were on board of the luggers, or on the towboat at the eastern bank of the river and saw the lights of both boats as the Argo came down and the Dumois came up the river, and who place the Argo in about the same position as her crew, to-wit: in the middle of the river.

JURISH, who was master of one of the luggers at the canal, which had previously broken lose and had been returned to the landing just prior to the vessels coming in sight, and whose lugger was lying on the outside of the Day Dream and from 40 to 50 feet from the bank, was asked and said, at page 91, viz.:

Q. Did you notice steamers coming down the river while you were there? A. Yes, sir; I saw the steamer coming down the river and he blew one whistle. I think

that was for the Day Dream and the Day Dream answered him with one.

Q. Where did he pass down—in what part of the river was he, could you tell? A. The boat coming down the river?

Q. Yes. A. I wouldn't swear, but I think he was coming right in the middle of the river, the same way any other steamer would come down. After a little while he blew another whistle again. He was a little more to the east, but like any other steamer, about in the middle of the river, a little more to the east, may be, a little more.

Q. Then you say he blew another whistle? A. Yes, sir. Then I looked down the river and I saw the steamer coming up the river on the east side of the Mississippi river. * * * And at page 92, he said:

Q. Was the big steamer crossing the river at the time the boats came together? A. Yes, sir, she was crossing the river.

Q. And the little boat was coming down the river about in the middle? A. Yes, sir.

Q. And the big steamer was crossing from the east to the west side? A. Yes, sir. * * *

Q. And the little steamer was coming down in the course—A. Yes, sir. And at page 93, said:

Q. The way steamers come down? A. Yes, sir.

Q. What I ask you is this—while the little steamer was coming down the river on her course, wasn't the big steamer crossing over the river in front of the little steamer? A. In front, yes, sir; sure.

The court says this witness "gives no satisfactory evidence as to where the Argo was when she first came

in sight of the Dumois," but this is clearly an error. It is true the witness speaks guardedly, for he was on the eastern bank and saw the vessels distant in front of him, and could not state the location of the Argo with exact precision, but he certainly places her far from the eastern bank, and "about in the middle of the river, a little to the east may be, a little more." But this is not all of his evidence on this subject, for he was recalled and had his attention called to a sketch made by him (copy of which is to be found on page 157) of the vessels at various times as they were seen by himself and Deedes (which he swears is correct), and their positions at such times are marked by him by the figures 1, 2, 3, 4, 5 and 6, of which he testified at pages 107 and 108, as follows :

Q. Now then coming down the river I see a mark of a boat marked No. 1. A. That is the steamship coming up on the right side of her.

Q. No. 2 what is that? A. That is the steamship when starting across the river.

Q. No. 3? A. That is were the collision took place, that is where they met one another.

Q. No. 3 are two boats? A. Yes, sir.

Q. No. 5? A. That is the Argo.

Q. That is the Argo? A. Yes, sir.

Q. No. 3; the upper one at No. 3 is the Argo also? A. Yes, sir.

Q. No. 6? A. That is the Argo when I first saw her coming down the river that is the time she blew her whistle for the Day Dream.

Q. But these are the positions of the boats in the river as you saw them? A. Yes, sir.

Q. Then you say the Argo was coming down in

what part of the river? A. She was coming like any other steamer or tug (which means in the accustomed course).

Q. What part of the river? A. In the middle of the river, but perhaps a little on the east side.

Q. Was she close to or far away from the bank on the east side? A. No, sir.

Q. She was far away? A. Far away, yes, sir.

If this is not direct and clear, and hence satisfactory, it would be hard to find evidence on any subject that is satisfactory.

DEEDES (p. 148), was pilot on the Day Dream, saw the Argo and heard her signal the Day Dream as she descended the river and passed the latter, and said latter's signal in reply, then the Argo's signal to the Dumois and the latter's cross signal in reply, which caused him to notice her and see her shooting across the river. This witness was examined as to the locality of the vessels when they came in sight of each other by reference to the above map or diagram on file marked "Libellant 3," and which was prepared under the direction of the preceding witness, and when shown this map the witness said (p. 150) it was pretty much correct, and with said map before him, at page 151, was asked and said:

Q. Here is No. 6 boat, what would you think—what would you think that to be, No. 6 boat coming down the river? Would you take that to be the Argo coming down? A. The only boat coming down was the Argo.

Q. Now, then, when you first saw her it blew one whistle? A. Yes, sir.

Q. Then afterwards the Day Dream answered that one whistle? A. Yes, sir.

Q. That would be when she would be about there and you down here? A. No, sir. Somewhere about where No. 5 is.

And this was when she whistled for the Dumois, and this places her where she is located by all the other witnesses for the libellant, in the middle of the river, and confirms the evidence of those on watch on board of the Argo.

And all the probabilities of the case point to Brown being where he says he at the time was, in the middle of the river. He was a skillful and experienced pilot of a great many years' standing—one who knew how many degrees there were in a point of the compass—his objective point was the jetties, which he was in great haste to reach, and not the east bank of the river at the New Canal, and he well understood that he was to reach that point as soon as the streamship Whitney, which had preceded her some hours. Under this condition of things, why should he be on the east bank instead of in the middle of the stream, where he would get the benefit of the current and make the best time and be facilitated in accomplishing the purpose of his trip? Not only the evidence, but all the probabilities are in favor of the Argo being where the libellants' witnesses place her; and this probability, even where there is a conflict, is not to be overcome except in case of a clear preponderance of evidence.

In the case of the City of New York 147, U. S., p. 79, the Court said: "Indeed, the probabilities that a steamer * * * will pursue the course customarily pursued in that vicinity by vessels bound from and to the home port, is so strong that deviation from that course

without apparent cause will not be considered as established without a clear preponderance of the testimony."

And that the middle of the river was the proper place under ordinary circumstances for a descending boat we will hereafter show.

We then have the evidence of Brown, Desemus, Orkney, Green, Jurish and Deedes on one side, supported by all the probabilities of the case, and further supported by the presumptions of the law, that when the vessels came in sight of each other the Argo was in the middle of the river, and demonstrated to be correct by the finding of the wreck of the Argo where she sank, 500 feet from the western shore (pp. 110 and 114), after the collision without moving to either the eastward or westward, and opposed to this is only the evidence of Lumbard, Sabitsen, Larsen and the ignorant and demented old Nicholas Theodore, who could neither read the statutes, pilot regulations, or figures and directions on the charts which should control him, and who in demonstration of his incompetency and ignorance of said statutes and regulations, and of the "starboard hand rule" or "rule of the road" which said regulations declared should be a "standing rule" for the government of pilots when vessels were meeting end on or nearly so, declared the Argo should have continued "right straight ahead" (p. 226) although he says he did not know whether she was going toward him at the bank of the river or down the river (p. 229), and that the Dumois in opposition to said "standing rule," and notwithstanding the signal for the contrary signal, which he said he heard from the Argo, should have pursued the

"port hand rule;" who testified the Argo was so close to him that he could see she was a white boat from his own chimney light, and although so near, and although he could not tell whether this white boat, which he thus saw, was going towards him or down stream, yet was "scared" she would sink his boat lashed to a tree on the bank and protected from such dire disaster by the lugger outside of him; who never heard the Dumois' whistles, never saw her until she was crossing the river with her white and green light in view, when some one called his attention to her, testified the pilot of said Dumois was "scared of the lights" (his lights) and "could not come on top of me" (him) "and sink me" (him) lashed to the bank with Captain Jurish's lugger on the outside of him, and all extending less than 50 feet from the bank; and yet the evidence of this "scared" old, ignorant, demented and pretended pilot, who did not know the width of the river on which he pretended to be a pilot, any where, not even at New Orleans, where he testifies it is a mile wide, while the fact is (as the chart, which he cannot read, and for which he says he has no use) shows is half a mile wide, the court refers to and adopts, saying at page 334:

"Nicholas Theodore, pilot on the tug Day Dream, which with its tow was about to land (had landed) at the lugger landing on the left bank just above where the collision took place, says that the Argo passed so close to him that he could see her color, that she was about 50 feet from him and he was afraid she would run into him."

And the intelligent, clear, direct evidence of Jurish, who was *not* "scared" of being sunk, although he was on his boat on the outside of the tug Day Dream, is re-

jected as unsatisfactory. Surely an attentive reading and analysis of the evidence of Theodore will show that it is worthless, biased and false, and of no value in determining anything in this case, and that the weight of evidence—that of said Brown, Desemus, Orkney, Green, Jurish and Deedes, six witnesses to three, with all the presumptions of law and fact in its favor, shows the Argo was at the time, where she claims to have been, to-wit, in the middle of the river.

Again. The river at this place is about 2,400 feet wide (see chart of Mississippi River Comm'r), and if the Argo was as close to the east bank as the Demois' witnesses put her, how does her wreck get within 500 feet of the opposite bank? There was not sufficient time from the moment the signals were crossed for her to have reached that point, unless the Argo was near the middle of the river, and in fact not sufficient time for the Dumois to have reached that point, farther to the westward than the Argo was (because the Argo struck the Dumois on her starboard side). The finding of this wreck is like the last fixed and certain point in a survey where all other points or corners are missing, but which can easily and certainly be found by running the back courses, and this, in this case would bring the Argo at the time in question where her witnesses put her, in the middle of the river.

But it is said in reply, how did the Dumois get from the eastern shore to within 500 feet of the western bank where it is claimed the collision took place? In reply we say there is no proof, nor is there any admission as to how near she was to the eastern shore. Larsen, the last man at the wheel, who took charge after the signals

were crossed and when the Dumois' wheel was hard astarboard, says she was half her length, 105 feet from the eastern bank. Lumbard says she was a ship's length, 210 feet; Sabitsen says she was 500 feet from said bank, and Theodore (*did not*, as the court finds) say the Argo was 50 feet from him or his boat, but on the contrary said "I could not tell how many feet it was away" (p. 225), and that she was more than 50 feet away (p. 229). And all that is said in the pleadings of Springer, is the indefinite assertion that the ascending steamer was "on the east bank" (p. 1), and in his answer found, on page 30, that there was fully 300 feet between the course the Dumois was then running and the luggers, all of which means the Dumois was toward the eastern bank, and, as the Argo's witnesses state, off the Argo's port bow.

But again it is said, suppose she was toward the eastern bank and not close against it, and to the eastward of the course of the Argo, being a much slower vessel, how could she get across the bow of the Argo? It is to be borne in mind that the Dumois was the ascending vessel, and when she swung her starboard side to the four mile current (see evidence of diver Conrad pp. 167 and 168) and diagonally across it, and thus received the very strong wind then blowing on her starboard beam, she had not only the force of her steam power propelling her, but the force of said strong current and wind greatly assisting her, and which would nearly double her speed, while the Argo being the descending boat running with the current would be impeded by the current in her starboard movement with a port helm, and would not be assisted by said wind, which would only strike her on her stern after her bow began to turn to the westward.

In fact we believe that when both vessels were thus crossing the river, the speed of the ascending vessel in crossing the river was far greater than that of the descending vessel, and this theory would get both vessels to the point where the collision occured (as evidenced by the finding of said wreck) within 500 feet of the western bank. If the Dumois was where she claims she was when the vessels came in sight of each other, and was only making 10 miles per hour in crossing the river, and was not greatly assisted by the strong current and wind on her starboard side while crossing diagonally across it, how did she within the time stated get to the place where she says the collision did occur, to-wit in the middle of the river? And if the vessels were "head and head" as is claimed, and the speed of the Dumois was not increased by the strong wind and current in crossing the river, and the Argo impeded by said current while crossing, the Argo being under ordinary circumstances the faster boat, and both vessels swung to the westward at the same time, how is it possible that the Dumois could have gotten farther to the westward than the Argo, where she certainly was, for the Argo struck her on her starboard bow? No other theory than the above would put the Dumois where she claims she was when the collision occurred.

Surely, the foregoing evidence, and especially the direct and positive evidence of Jurish, who has no interest whatever in the case, and who saw the Argo when she first whistled to the Day Dream and continuously thereafter until she sunk, and who says she was *far away* from said eastern shore where he was a spectator, cannot be wrong.

And that the wreck of the Argo does lie sunk (as above stated) 500 feet from the western shore, and never moved after the collision occurred, except perhaps floated down stream for four minutes until she went out of sight to the bottom, we will show under the head as to "where in the river the boats came in collision."

II.

WHAT DID THE RESPECTIVE VESSELS DO TO AVOID COMING TOGETHER?

Captain Brown's description of what he did begins at page 49, where he was asked and said as follows :

Q. A short time before you saw this boat (Dumois) did you see any other boat? A. Yes, sir, I passed the Day Dream; she was on the east shore; she was making a landing, I think—something of that kind. * * *

Q. Did you give any signal to her? A. I blew one signal to her and she answered by blowing one.

Q. When you passed her did you see any other vessel? A. Yes, sir, I saw the vessel.

And at page 49 said :

Q. What did you see, rather? A. I saw a bright and red light coming up on the east shore. * * *

Q. Over what bow of your vessel did you see? A. On the port side of our bow, forward. * * *

Q. Upon seeing it did you give any whistle? A. I blowed one whistle.

Q. Prior to your blowing one whistle had you received any whistle, had you received any whistle from the other boat? A. No, sir, not anything.

Q. After you blew one whistle, what then? A. It

was some time before she answered by blowing two blasts of her whistle—the ship coming up.

Q. What did you do then? A. I immediately afterwards, I blowed again. I repeated with one whistle again, and then put my helm hard a-port.

Q. When she blew two whistles was there any change in her course? A. Yes, sir, I could see she had starboarded her helm.

Q. What lights did you see then? A. I saw the green light coming out after she changed her course.

And at page 50 said:

Q. That indicated to you what? A. That he was going across my bow.

Q. He was going across your course? A. Yes, sir.

Q. After he blew two whistles? A. After that he never blew any more until he blew his alarm.

Q. After you blew your one whistle the second time did he reply with two whistles? A. No, sir.

Q. What did he do after you blew your one whistle the second time? A. About that time he was right on top of me—very near me; then he blew his alarm.

Q. Did they come together—did they come together shortly after that? A. About 15 seconds. * * *

Q. After the collision occurred what was done—how did they strike together, where did they strike? A. I struck the Dumois eight feet aft from her stem—eight feet.

Q. Did you examine the place afterwards? A. I saw it when she was at the dock. Then the vessel was going so fast it was half a mile before her headway was stopped, she went by me so fast. She was five or six seconds passing me. * * *

Q. By one blast of your whistle and the porting of your helm, what was the purpose of that? To which way did you want to go? A. I wanted to go to the westward, on the other side, out of his way; I was quartering. By the velocity I was going I was sure I could have passed him. We were going pretty near 20 miles an hour.

Q. Was the Argo a fast boat? A. Yes, sir, she was a very fast boat—a fast yacht. But he steered right across my bow. * * * (Page 51.)

Q. How far past you did she go before she stopped—you drifted astern? A. No, as soon as I got under her stern I told the engineer we would try and get to the west bank. We were going across; she was up the river nearly half a mile before she stopped, passed us.

DESEMUS, the lookout and deckhand, was asked and said, page 80:

Q. When you passed this, you say you passed something on the left bank—east bank? A. Yes, sir; I thought it was the Day Dream, or some of them small boats towing barges.

Q. Did you give any signal to these boats? A. Yes, sir, I gave one—at least Captain Brown gave one to them.

Q. About that time did you notice any other lights anywhere; if so, when? A. Shortly after we passed the last craft I saw a light. I was on the lookout. I saw a red and white light.

Q. You were on the lookout? A. Yes, sir.

Q. How far off from you was it when you first saw it? A. About three-quarters of a mile.

Q. Do you know whether Captain Brown saw it at

the same time that you did, or about the same time? A. I think he did, because as soon as I saw them I said, "Captain Brown, there is a vessel coming." He said, "Yes." He waited a little while. I expected to hear the vessel blow. She didn't blow, so he blew one blast of his whistle.

Q. What was the next thing that occurred? A. About 10 or 12 or 15 seconds after he blew we got an answer of two whistles. Captain Brown blew one immediately. We got no answer and Captain Brown headed her to Algier's bank, and this vessel took a change and came across the river.

Q. She left the east bank and came across the river to the west bank? A. Yes, sir, towards the west bank.

Q. When she came across did she make any change in her lights? A. Yes, sir, I saw the green light and the masthead light as well.

Q. Was the red light shut out? (p. 81) A. Yes, sir. I saw the green light all through the change when she was going across the river.

Q. As soon as the Dumois crossed the Argo's signal, and the red was shut out and the green light appeared, what did you do then. A. I left the bridge and started back aft.

Q. For what? A. To wake up the people. I thought there was going to be danger right then. I saw a ship crossing our signal and I ran aft.

Q. Did you call them? A. I didn't go all the way aft. I stopped right at the engine house door, about amidships.

Q. How long did you stop there? A. Maybe about two seconds. I just stood there and saw the ship, then

I ran aft right away. I don't think I was four seconds going from the bridge aft, and I hollered below for them to get up quick, there was danger. As soon as I hollered danger they struck. I didn't see her strike, but felt her strike, and fell towards the companionway aft the cabin and was knocked down. I got up on my feet quickly and hollered down she was sinking, to get up quickly, and then I left the deck of the cabin for the yawl boat. But the Dumois, she had gone way beyond us. * * *

Q. I want you to be sure who it was who blew the first signal; was it the Argo or the Dumois? A. The Argo.

Q. And that was responded to by a cross signal of two blasts? A. From the Dumois—yes, sir.

Q. Then Captain Brown blew one signal? A. Yes, sir, immediately after the two were blown.

Q. Then what signals did she blow? A. I never heard any more at all until just about when I got amidships—well, before I got amidships, when I was running I heard a lot of hollering and a lot of whistles from the ship—danger signals I suppose they were blowing. * * *

ORKNEY, the engineer, at page 68, said:

I heard the whistles distinctly, both our own and others, and my attention was drawn to a cross signal given by this vessel we had a collision with. I did not know what vessel it was, but previous to that I had come up from the engine room and looked out, and I saw this tow passing, what looked like a tow passing, and I heard her whistle and saw her lights, and then I went below again and heard our captain blow the whistle which I supposed was for another steamer, and then I heard two whistles blow, which I thought was unusual, and I came

up to see what it was, and I could see the white and green light of the vessel (that is, after she had changed her course), which I knew was wrong. It should have been the white and red light. Then I hollered to our firemen, "We are gone." I could see then we never could recover ourselves. It was a very short time between the time they blew the signal and I saw this light, and I kept putting my head further up through the companionway. I was not out of the engine room a second—no time, hardly—when I saw the loom of the vessel going right up against our bow; then I saw the balance of her coming up out of the darkness. Immediately after that we struck her, and the concussion threw me down the engine room ladder, which was about four or five steps. With the shock the engine stopped, so I came on deck again, and I looked around, and they commenced to get the boat out, and then I went below again and looked around and saw her head pointing towards the bank. * * * (Page 69.)

Q. How soon was it after the collision that this steamship Dumois disappeared—the boat that collided with you—did she disappear immediately? A. Yes, sir.

Q. Was she stopped? A. She could not have been stopped at the rate of speed she was going, because when we got in the boat we couldn't see her. She had gone up the river.

Q. Did she disappear as if under way? A. I should judge she was under way, the way she was coming towards us.

Q. Was she coming slowly or rapidly? A. She was coming rapidly, because it was immediately after I saw the lights that she came right on us. (Which, of

course, was after she had changed her course, as above stated.)

Q. After she struck how long was it before she disappeared? (p. 70.) A. Not half a minute before she was gone, because we just crashed into and scraped along her sides. * * *

And said at page 74:

Q. Of the two boats, which blew the first signal, the Argo or the Dumois? A. The Argo blew the first signal.

Q. That was one blast? A. Yes, sir.

Q. What response was there to that? A. He blew two.

Q. And then the next blast? A. Then Captain Brown immediately blew one.

Q. Then what was next? A. The next was the danger signal from the Dumois, but they were all so close together there was very little time between them. * * * (Page 75.)

Q. When did you go on deck again? A. Not until I heard the whistle blow again.

Q. Not until you heard the signal from the Dumois? A. Yes, sir; not until I heard the cross signal; that was what brought me on deck.

Q. Then the Argo replied by another signal? A. The first signal she blew was answered by the Dumois with two, then the Argo blew one again.

Q. That was all the Argo blew? A. Yes, sir; then the Dumois blew the toot whistle—that is, the danger whistle; she loomed right up; she was no distance at all from us.

GREEN, the cook and steward, was asked and said, at page 96:

Q. Just prior to the collision did you hear any whistles? A. Yes, sir, I did.

Q. What whistles did you hear? A. The first whistle I heard was the Argo.

Q. What did she blow? A. She blew one blast of the steam whistle, to go to starboard.

Q. Was there any response to that? A. Yes, sir.

Q. What was the response? A. Two whistles.

Q. How soon did the response come after the Argo had blown the one whistle? A. It was inside of a minute.

Q. Well, then, were there any more whistles blown? A. Yes, sir.

Q. What were they? A. The Argo blew one blast again.

Q. Was there any response to that? A. Yes, sir.

Q. What was it? A. Two, then three short whistles on top of it, or four from the other vessel.

Q. Where were you precisely when these whistles were being given by the two boats? A. I was standing in the hatchway that led down in the dining room and kitchen (p. 10). There was a pair of steps that led all the way down, and I was on the top step with my head out of the trunk looking out *when the second whistle was blown*

Q. You understood there had been a cross signal? A. Yes, sir. I knew a cross signal had been blown, and I knew there was something the matter, and I was looking out for myself.

Q. You came, then, where you could see? A. Yes, sir.

Q. Well, what was it you saw? Just tell us in your own language? A. I saw there was a steamer coming

up the river, apparently crossing the river, and I saw that our boat was bearing right on the vessel, or that the vessel was bearing right on to ours, either one or the other. I furthermore saw—it looked to me, the way it loomed up, that a collision was inevitable. * * *

Again, at page 99, he was asked and said:

Q. After the collision occurred, after the Argo had struck the Dumois, what became of the Dumois? * * * A. As far as I know—I think she stopped her engines and drifted around there in the river after she lost her headway. I couldn't say whether she backed or went ahead; I wasn't on board of her to know—she went by there like a railroad train after we struck; it was not two seconds when we saw her back—we passed right under her stern counter.

Q. She wasn't stopped? A. I don't know whether she was going ahead or backing her propeller.

Q. But she was disappearing up the river? A. Yes, sir, at a great rate of speed.

BROADHURST, the fireman, was down in the fire room, where he heard the passing signal of the Argo, and came up after the collision had occurred, and saw as follows (p. 87):

We left Algiers on the evening of the 27th, and some time between 12 and 1 o'clock I heard the captain signal to pass a boat—he blew a single blast of the whistle, and shortly after he blew that one he blew another blast, and shortly after that the shock came. That is all I know about it—that is all I can tell (p. 88).

Q. After the shock did you come up? A. Yes, sir.

Q. Then what did you see? A. The first thing I saw—I looked forward and I saw the Dumois. I didn't

know it was the Dumois then—I saw a steamer across our bow—lying right square across it.

Q. Lying still or coming up the river? A. Coming across our bow up the river.

Q. Did she disappear rapidly? A. Yes, sir. I didn't have much time to look after her. She went out of sight. * * *

Q. When you got into the boat and pushed away from the Argo did she go down very soon after? A. Yes, sir. We hadn't got more than 100 feet before she went down. * * *

Q. At that time where was the Dumois? Could you see her? A. No, sir. We could hear her engines working, but could not see her.

Q. Was she up the river? A. Up and across.

Q. How far up was she? A. I should say half a mile.

Such is the evidence of those awake on the Argo, as to what the Argo did to avoid the collision, as well as what was done by the Dumois.

On the other hand, the evidence of those on the Dumois is directly to the oppose, and to the effect that the Dumois blew the first signal (two blasts of her whistle) and that the Argo crossed it with one blast of her whistle. The evidence of these witnesses on this subject is as follows:

LUMBARD was asked and said, at page 242:

Q. State, as near as you can, what took place from the time you first discovered the lights of the Argo? A. I blew two whistles and the Argo answered with one. I then blew again to let her know I had starboarded my helm, immediately followed up with the danger signal

and immediately stopped and backed. It was not—well, I couldn't exactly say what time it was when the Argo—came around on a port wheel—ran into our bow, our starboard bow, about 15 or 20 feet aft of the stem. She was still going ahead when she ran into and struck. Then she—we were backing—she drifted a little astern of us. * * *

Q. What interval was there between your first signal of the two blasts and the repetition of those signals? A. The second time I blew the two whistles?

Q. Yes. A. None at all—very little. I blew two and then gave them the danger signal after two (p. 243).

Q. That was hardly the question I asked you? A. I didn't understand you, Mr. Grant. I blew the two whistles first.

Q. And the Argo answered? A. With one.

Q. You repeated your whistle? A. Yes, sir.

Q. What interval was there between the repetition of those two whistles? A. It could not have been two seconds.

Q. You answered the cross signal immediately? A. Yes, sir, with two and the danger signal.

SIBITZIN, second mate of the Dumois, who says he was on watch and on the bridge with the pilot, was asked and said, page 259:

Q. Which vessel blew the first signal, and what signal did she blow? A. The Dumois blew the first signal.

Q. What signal did she blow? A. She blew two whistles, starboard helm.

Q. Was there any answer? A. There was an answer of one whistle after that.

Q. What did the Dumois do then? A. She blew two again, and then the danger signal right away. * * *

Q. Can you state of your own knowledge that you did not hear a signal from the Argo before you sounded your signal? A. No, sir, no signal from the Argo before we signaled.

Q. Did the Argo answer the danger signal? A. No, sir.

Q. How long was it after the two signals were first blown by the Dumois that the Argo changed her course? A. I couldn't very well judge—not so very long between, because she was going such a horrible speed and we were going along first rate. It must have been some couple minutes, something like that.

Q. What did you see after she changed her course? A. We saw her red light. She apparently changed her course. We were going out in the river all the time and she followed us up.

And at page 270 said:

Q. You have already said you stopped and backed your ship and lost your headway; you have further said that your ship was across the current. Now, how could the Argo drift faster down stream than you would, with both being water born? A. Because our ship did not stop as soon as the engines was stopped.

Q. Then you went on past the Argo after the collision? A. We were going a little ahead, yet.

Q. How far ahead of the Argo did you go before you stopped, four or five lengths that you have spoken of? A. I mean three or four lengths; I mean she was astern of us when she disappeared, that is what I mean.

Q. Then you had gone up stream away from her? A. I suppose so; she was not stopped.

LARASEN, one of the streersmen on the Dumois, was asked and said at page 296 as follows:

Q. Where were you when the collision took place between the Dumois and the Argo? A. At the wheel.

Q. How long had you been at the wheel? A. Three or four minutes.

Q. Did you hear any signals from an approching vessel while at the wheel? A. No, sir.

Q. Did you hear any signal given by the Dumois, and if so, when was that signal given? A. I heard it after I had taken the wheel and before I took the wheel.

Q. After the signals were given by the Dumois did you hear any signals in response? A. The first time I heard one blow from the other.

Q. What was the next signal you heard, either from the Dumois or the approaching vessel? A. Likely from the approaching vessel.

Q. What was the next signal you heard? A. It was two whistles from the Dumois.

Q. How many whistles did you hear in response to the first signal of the Dumois that you have testified to? A. Only one.

Q. After you heard this single whistle, what whistle was given? A. I heard two whistles from our boat.

Q. Did you hear any response? A. No, sir.

Q. What was the next signal you heard? A. I heard six or seven short blasts from our whistle.

Q. Did you hear a whistle from any approaching vessel before the Dumois gave her signal of two blasts which you have testified to? A. No, I did not. * * *

Q. Which way were you facing at the time the first signal was given by the Dumois? A. When the first signal was given I was not at the wheel. * * *

Q. Had you taken the wheel at the time you heard the response to the Dumois' first signal? A. No, sir.

Q. When did you take the wheel? A. Between the first and second signal.

Here again the evidence of those on the Argo as to what each vessel did before the collision is fully sustained by Pilot Deedes, of the Day Dream, and Captain Jurish, of one of the luggers, both of whom were at the shore opposite and witnessed the operations of both vessels.

DEEDES, after describing how the Day Dream landed luggers, when one of them got adrift, how the Day Dream went after her and secured and landed her, at page 148 said:

We made a landing first at the canal (opposite to which the collision occurred) with these luggers, and one of the luggers got adrift, then we went after her, about 12 o'clock we went after this lugger.

Q. Did you get hold of her? A. Yes, sir.

Q. What did you do with her? A. We came up with her and made a landing just below the canal.

Q. Was there any boat in the river that gave you a signal? A. We were about making a landing when the Argo blew one whistle.

Q. Did you make any reply? A. Yes, sir, we answered.

Q. With one whistle? A. Yes, sir.

Q. After that did she blow again? A. She blew one whistle again.

Q. What was the next thing? A. I heard another boat blow two whistles; it must have been the Dumois.

Q. Did you see where the Dumois was when she blew two whistles? A. She was just behind the Day Dream.

Q. On the east shore? A. Yes, sir, coming up, hugging the shore.

Q. Well, then, when the Dumois blew two whistles did she keep her course or did she change her course? A. When she blew two whistles that drew my attention and I went over to the other side of her (the Day Dream) and looked and saw the Dumois crossing the river and saw the green shooting across.

Q. After the Dumois blew two whistles did the Argo blow another whistle? A. Yes, sir, she blew another whistle.

Q. She blew one blast? A. Yes, sir.

Q. After that what did you hear, if anything? A. The Dumois blew her danger whistle—four whistles.

Q. Did anything occur after that? A. Then the Argo answered with the same danger signals. (Of course the latter is a mistake, as the Argo did not blow any danger signal, but in all other respects this evidence confirms that of the Argo.)

Again, at page 150, this witness said:

Q. After the Argo blew her whistle as you have described, the Dumois then blew one whistle and crossed the river? A. How crossed the river?

Q. The Dumois blew two whistles? A. Yes, sir.

Q. And went across the river? A. She went shooting across the river. I could see her green light.

And again, at page 151, said:

Q. You say you saw them after they separated? A. Yes, sir.

Q. How did they go then, did the Dumois go up the river? A. The Dumois stopped.

Q. The Dumois stopped, but she stopped after the collision occurred? A. I don't know when she stopped, but anyhow they both stopped; seemed to be 200 or 300 yards apart—seemed that way. * * *

Q. Was there any distance between the Argo and the Dumois? (Page 152.) A. I told you about 200 or 300 yards.

Q. Which was the farthest up the river? A. The Dumois.

Again, on cross-examination, at page 153:

Q. How long before the Argo came down did you succeed in getting her (the lugger) into the landing? A. We had just made the landing when the Argo blew one whistle—just made the landing.

Q. You were just tying up in there? A. Yes, sir, just making the landing.

Q. The Argo first blew when she was opposite you, didn't she? A. No, she blew before she got to us; she was far above us.

Q. How far up? A. It might be 50 yards—150, in fact—above us. * * * (Page 154.)

Q. When did the Argo whistle the second time? A. A short time after they blew one whistle again.

Q. And she passed you then? A. No, she had not passed us then.

Q. She first blew for the Day Dream 150 yards above you? A. Yes, sir.

Q. And when she got opposite you she blew another whistle again? A. Yes, sir; not quite opposite us yet. * * * (Page 155.)

Q. You have been asked how the pilot house was, etc.; but when you saw the Dumois coming up the bank, on the east bank as you have described, were you in the pilot house at that time? A. No, sir, I was on the main deck.

Q. On which side of the Day Dream were you, on the starboard side or the port side? A. When I heard the two whistles I went to the port side. I could not see from the port side.

Q. You went to the port side and looked down the river? A. Yes, sir.

Q. And it was then you saw the Dumois? A. Yes, sir, I saw the green light.

Q. You say when you heard the Argo whistle and saw her coming down the river, you were in front of the pilot house? A. I was on the starboard side.

Q. And then you looked up the river? A. No, sir, I was looking on the bank when I heard the whistle blow. I looked up. I was just making a landing and my attention was drawn to the whistle.

Q. After you heard the signal from the Dumois to the time the boats came together and then separated as you have described, was there anything to interfere with your seeing them? A. No, sir.

Q. You were standing on the port side looking at them? A. Yes, sir.

And at page 156 said:

Q. When was that, when did you see the green light on the Dumois? A. After she blew the two

whistles; after the Argo blew one whistle and I heard some other boat answer with two whistles, that made me go to the other side of the boat, and then I saw the green light on the boat coming up.

JURISH, who was at the river bank at the time, was asked and said at page 91 as follows:

Q. Were you inside or outside of the Day Dream? A. I was on the outside.

Q. How close were you to the shore? A. I was from the shore—about—the Day Dream was making a landing—I was from the shore—I don't like to make a mistake—about 50 feet, I guess, from the bank. I don t think—I guess 50 or 40 feet from the bank. * * *

Q. Did you notice any steamers coming down the river while you were there? A. Yes, sir, I saw the steamer coming down the river, and he blew one whistle, I think it was for the Day Dream, and the Day Dream answered him by one whistle.

Q. Then did he pass down—in what part of the river was he, could you tell? A. The boat coming down the river.

Q. Yes? A. I wouldn't swear, but I think he was com ng right in the middle of the river, the same as any other steamer would come down. After a little while he blew another whistle again. He was a little more to the east bank, but like any other steamer about in the middle of the river; a little more to the east, maybe—a little more.

Q. Then you say he blew another whistle? A. Yes, sir; then I looked down the river and I saw the steamer coming up in the river, on the east side of the

Mississippi river. I didn't hear any answer from the steamer.

Q. From the steamer going from the east shore? A. Yes, sir; then after a little while I heard four whistles that the steamer was blowing; then she was a good distance out in the river, you know; then I saw the little boat coming down blow four whistles; then after that I saw the little boat hit the big boat on the right side on his bow. * * *

And at page 92 said:

Q. Was the big steamer crossing the river at the time the two boats came together? A. Yes, sir, she was crossing the river.

Q. And the little steamer was coming down the river about the middle? A. Yes, sir.

Again, at page 93, said:

Q. What I ask you is this: While the little steamer was coming down the river on her course, wasn't the big steamer crossing over the river in front of the little steamer? A. In front, yes, sir, sure.

And these witnesses are confirmed by said Nick Theodore as to the whistles blown by the Argo. (Rec., pp. 228-9.)

It is therefore clear from the evidence of both sides that both vessels, after the signals were crossed, proceeded from the places where they respectively were in the river when they came in sight of each other toward the western shore; and it is equally clear from the weight of evidence (and the court finds it to be a fact) that the single blast of the Argo's whistle was the first blown to make the above manœuvre, and that it was given strictly in accordance with law we will show hereafter.

III.

THE NEXT INQUIRY IS, WHERE IN THE RIVER THE STEAMERS WERE WHEN THEY CAME TOGETHER?

CAPTAIN BROWN was asked and said on this subject as follows, at page 50:

Q. In what place in the river were you when the collision? A. We were a little to the westward of the middle.

After the loss of the Argo some movables from her floated and were found on the west shore, and concerning these this witness testified as follows (p. 54):

Q. There was some wreckage came ashore? A. Yes, sir, on the west side.

Q. What did it consist of? A. Stern sheets of the yacht that were aft on the quarter deck, they floated off and went on the west shore; a little raft.

Q. Was there anything in the shape of life preservers? A. Yes, sir, there were some of them further down; we didn't see them picked up; they were picked up by some of the natives.

How for below was that, where you saw it—was it below Lucas canal? A. It was two or three miles.

Q. On the opposite side of the river? A. Yes, sir, on the west shore.

Q. Would that indicate, in your judgment, anything as to where the collision occurred with reference to the river—whether in the middle of the river or on the east or west bank? A. It was certainly on the west bank, for that drift came in on the west shore; it was evidently there.

ORKNEY, the engineer, was asked and said, at page 69:

Q. When you came up, as you have stated, and looked out and saw the Day Dream, or the Day Dream tow—A. I saw a tow. I didn't know what vessel it was.

Q. How for were you from the tow, with reference to the bank of the river—were you close to the side the Day Dream was, or on opposite side, or about the middle? A. I guess we must have been in the middle, because we were so far away. I could make out it was a tow by the lights, but I couldn't see the vessel at all.

And after this witness had described the sinking of the Argo and how her crew had taken to the yawl, was asked, at page 70, and said:

Q. What was the next thing you did? A. We hollered to the vessel (Dumois.) We heard some voices aboard the vessel, although we couldn't see the vessel. I saw we were midway between the two shores and I proposed that we pull ashore; we didn't know which shore to go to, because one was as far as the other; then they commenced to holler on the steamer; she was backing down towards us.

DESEMUS was asked and said page 82:

Q. After you got into the yawl could you see the bank of the river? A. I could see the dark shade to the west bank—to the Algiers bank.

Q. Which bank were you closest to? A. To the Algiers band, the right bank going down, or west shore.

BROADHURST, the fireman, was asked and said, page 89:

Q. While you were in the yawl boat could you see the banks of the river on each side of it? A. I could see the bank of the river before we left the Argo; as

soon as my eyes got rid of the glare of the fire room I could see the banks.

Q. In which part of the river was the Argo then? A. About the center.

GREEN, the steward, was asked and said, at page 101, as follows:

Q. Now, after you got into the yawl boat and the Argo had sunk, could you see the banks of the river then? A. Yes, sir; we were closer to the west bank than to the east bank, and we started for the west bank, it being the closest, to try to get there in the yawl boat.

LINDAUER, one of the newspaper correspondents on the Argo, and who was saved, was asked, at page 159, and said:

Q. When you first came out of the cabin could you have any idea where the Argo was in the river? A. Yes; sir; the first thing I looked for was to see how far we were from the shore, thinking I might have to swim.

Q. What did you do then? A. I saw a woody shore—trees—I couldn't tell which side it was, whether it was the east or west bank, but as near as I could judge —well, between 200 and 250 feet, I should judge, from the shore, was where the Argo was, as near as I could judge.

And at page 162 this witness said:

Q. When you were in the small boat could you see the trees on the bank? A. Yes, sir; I could see the trees.

Q. Could you notice how close you were to those trees then? A. Not even then.

Q. Well, after you got on board the Dumois did you notice how close you were to the shore? A. Yes, sir.

Q. Which shore were you nearest to? A. The woody shore on the west bank of the river.

Q. Then you were nearer to that shore than you were to the east shore? A. Yes, sir; decidedly.

JURISH, who was on the east bank and who would have the least opportunity to judge exactly where the

collision occurred, was asked at page 92, and said as follows :

Q. About what part of the river were they when they came together? A. They were about, right a little below where I was.

Q. No, no, but I mean with reference to the bank —where they in the middle of the river, or near the east bank or near the —— A. They were in the middle of the river ; a little more, maybe, to the east side.

DEEDES, who was also a witness of the collision from the east shore, was asked, at page 151, and said as follows :

Q. Well, then, the point of the collision would be right opposite where the Day Dream lay on the shore? A. Yes, sir.

Q. A little westward of the middle of the river? A. Something like that ; in the middle of the river, or a little more to that side.

Q. A little more to the west side? A. Yes, sir.

The foregoing evidence as to the place in the river where the collision occured is somewhat at variance, but all is to the effect that it occurred between the middle of the river and its western shore ; but that Captain Brown, Green, Desemus and Lindauer are correct in their statements that the point of collision was well to the west of the middle of the river is settled beyond all dispute by the finding of the wreck of the Argo, by NORBERT BURAS, who, after stating how he found the same, describes its location, at page 110 of his evidence, where he was asked and stated as follows :

Q. How far below the canal is the place where this wreck lays? A. It is about four arpents, more or less

Q. Four arpents, more or less, below the canal? A. Yes, sir.

Q. Near which bank of the river? It is nearer the right bank going down, or the left bank? A. It is on the right bank going down.

Q. How far from the bank of the river is the wreck? A. About 500 feet, more or less, from the right bank.

Claimant, realizing the force of the above argued in the Court of Appeals, that the presence of said wreck 500 feet from the western shore was accounted for by the evidence of Orkney, the Argo's engineer (which it was contended, was to the effect that *immediately* after the collision the Argo's engines, which had been stopped by the collision, as well as her headway) were started, when she was heading toward that bank, and that this would carry her from the contended point of collision in the middle of the river where she sank, but there is no evidence to support this contention.

Orkney's evidence shows, that after the collision had taken place, after the Dumois had passed along the front of the bow of the Argo (which was knocked in, p. 242) and gone out of sight, and after the yawl of the Argo had been lowered into the water and while the crew were getting into it preparing to leave the Argo to save their lives, and when she was sinking rapidly, that it was noticed that her head was pointing to the west shore, when Captain Brown thought she might possibly be beached, that then Orkney rushed below just prior to the yawls shoving off, and started her engines, and then she was sinking so rapidly by her head that her crank shaft was turning in the water then in her hull, and when her stern was already lifted out of water, and her propeller was revolving in the air and as a consequence not moving the Argo at all. The accuracy of this statement, and the error on any contention to the contrary can best be demonstrated by giving the evidence of Orkney, as taken from his own lips by the stenographer as it appears on pages 75 to 77, as follows:

Q. The Argo struck the Dumois at right angles?
A. It looked like it.

Q. Did the shock stop the engines of the Argo?
A. Yes, sir.

Q. Did you go back and start the engines again?
A. Yes, sir, the second time.

Q. How long did her engines work after you struck?
A. The engines were working after we left the boat, her stern was out of water and her wheel was revolving.

Q. When did her stern come out first? A. When we were lowering the boat.

Q. How far were you from the Dumois? A. I couldn't see her then, she had gone.

Q. The Argo continued right down stream? A. We couldn't tell where she was going, she was pointed towards the bank when I went down to start her up the second time.

Q. She didn't stop from the time until you got oft of her? A. No, sir, she was still going (not ahead as was contended, but) like a hog rooting (which is anything but going ahead).

Q. Can you tell how long it was from the time of the collision to the time you cast off the line of this boat with the men in it? A. I should judge it was about three minutes.

* * * * * * * * * * * *

Q. Mr. Orkney, have you already stated in this case that you started the engines of the Argo before you left her? A. Yes, sir.

Q. Please state when it was—at what time that you started the engines, and if you know, in which way the Argo was heading at the time you started them? A. It was shortly before I got into the boat.

Q. Had the boat already been launched? A. The boat was in the water, they were holding on to the painter, some were getting into the boat at the time I ran down and started her up.

Q. Then they were in the boat? A. Some were in the boat and some were on deck.

Q. They were on deck ready to get in? A. Yes, sir.

Q. And then it was that you started the engines? A. Yes, sir, after I passed the painter to the captain, the captain was in the boat and I passed the painter to him and went below and started the engines up.

Q. How did you happen to go and start them up? A. I saw her heading toward the shore and I thought, with the suggestion that the captain made, that we might

beach her and save her, but we didn't know at that time that she was so badly damaged.

Q. How long was it prior to your shoving off from the boat? A. We were in the boat three minutes from the time we hit, it must have been two minutes after we struck that I started her up again.

Q. It was just prior to your shoving off from her? A. Yes, sir, I went down and started her up, and when I started her I found that the crank was turning in the water and I saw then that the boat was going down very rapidly and we had just time to get away from her.

And this is fully supported by Lindauer at page 161 :

Q. How long did the Argo float after you got into the yawl boat? A. After I got into the yawl boat I don't think it could have floated over a minute or a minute and a half.

Q. You had only got away when she went down? A. Yes, sir, just barely got away from her. The way I noticed that the wheel of the Argo was turning, was that someone called out, look, you will go under her counter, and they took an oar and shoved the stern of the yawl boat from the stern of the Argo, just then the stern of the Argo lifted in the air.

* * * * * * * * * *

Q. At the time that you shoved off from the Argo, was the Argo making headway through the water at all or just floating? A. That even I don't know, I know her wheel was in motion.

Q. The wheel was under the water? A. When I first noticed her wheel, but after we got a distance away from her, say probably 15 or 20 feet I could see the wheel in the air and the revolution was so much faster than it had been under water I thought she was fighting the air.

And the evidence of the claimants themselves shows that after the collision the Argo never moved from the place where the collision occurred, except floating down stream. So say both Pilot Lumbard and Mate Sabitsin. At page 245 LUMBARD was asked by claimants' proctor and stated as follows :

Q. Which way did the Argo go after she struck the Dumois? A. She drifted very slowly along our side. About the time she got under our stern our headway was fully stopped and she was right there within a—well, a ship's length, I suppose, under our stern.

Q. Did she have any headway on, did you notice? A. When she sunk?

Q. Yes. A. No, sir.

Q. Do you know which way she was pointed? A. She was pointing a little to the west shore.

Q. Up stream? A. Yes, sir, up stream.

And SABITSIN, the mate, at pages 270 and 271, said:

Q. She went down just about where the collision occured in the river, only a little further down stream? A. She drifted below that.

Q. But she didn't go either to the east or the west bank? A. I couldn't tell.

Q. You saw her lights? A. Yes, sir, I saw her green lights.

Q. Did that green light that you saw, did it go after the collision, did it pass to the eastward or the westward, or remain in about the same place? A. As I saw it, it remained in about the same place.

It is therefore, clear from the evidence of both sides —in fact it is one of the things settled in this case (and settled notwithstanding the evidence of the master of the Dnmois in direct opposition to that of his mate and pilot, who on coming on deck as the collision occurred, said p. 211, "then I saw the yacht, she drove alongside of us and then went full speed to the west bank") that the Argo sank at a point in the river neither to the eastward or westward of where the collision occurred.

And this most important fact the court fails to notice or in any manner heed, as well as it does the further fact, that after the signals were crossed and when the danger was imminent the man steering the Dumois was suddenly taken from the wheel and the man Larsen, who did not know the meaning of a crossed signal, was put in his place.

And that the wreck as found by Buras is the wreck of the Argo is established by Captain Brown's identification of the parts of the same which Buras brought up with his grappling iron, and which are in evidence. See Brown's evidence taken May 24, 1897 (p. 114); also that of Springer, taken in open court on December 16, 1897 (p. 180).

This location of the wreck is not only confirmatory of the place where the collision took place, but it is also strongly confirmatory of the fact that the Argo was in the middle of the river when she first saw and first whistled to the Dumois with one blast of her whistle, for there was not sufficient time after her first signal was crossed and the Argo's second signal blown and her helm ported, for her to have gone far before the vessels struck, whereby the Argo's forward motion was entirely stopped, and from that time to the sinking she obtained no headway to the western bank.

Having established, as we believe, that when the vessels first came in sight of each other, the Argo was in the center of the stream descending, and that the Dumois was on the eastern shore about 400 or 500 feet from the bank (and the mate on watch says she was 500 feet), coming up the river and a mile or more distant from each other; and having further established, as we believe, that the Argo, after having first blown one blast of her whistle as a passing signal to the tug Day Dream landed at the eastern shore, and received an answer of one signal from said Day Dream, that immediately thereafter she blew a passing signal of one blast of her whistle to the steamship Dumois, and that she received from said Dumois a cross signal of two blasts of said Dumois' whistle and that thereupon said Argo replied with another single blast of her whistle and at once ported her helm to go to her starboard, while said Dumois, immediately after crossing the signal of said Argo, changed her course and shot across the river in front of the Argo and thereby caused the collision, we will undertake to show which vessel was in fault in causing said collision.

And as preliminary to this question we will show that the course pursued by the Argo in the middle of the river was under ordinary circumstances the proper course for a descending boat. So says Lumbard, the pilot of the Dumois, at page 244, where he was asked and said as follows:

Q. Which side of the river is it customary for the descending boat to take? A. They take the middle of the river.

Q. Why is that? A. Because there is more current there.

And at page 48 Captain Brown, of the Argo, was asked and said:

Q. Whereabouts were you in the river when you first noticed the steamer which came in collision with you —where was your boat, in what part of the river? A. I was in the middle of the river.

Q. You were going down stream? A. Yes, sir.

This he repeats at page 50, and on page 57 he says he was on his right course (the middle of the river), referring to the middle of the river.

And Captain Jurish, at page 91, says the boat coming down the river "was coming right in the middle of the river, the way other steamers would come down. He was a little more to the east, but like any other steamer about in the middle of the river; a little more to the east, maybe—a little more."

And there was no place for an ascending steamer to cross where this collision occurred, and especially not when the wind blows as it did that night. (Lumbard, p. 244.)

And there is no evidence to the contrary, and we therefore say that according to custom the Argo was in her proper place. The only suggestion to the contrary is to be found in the latter part of the third article of the Dumois answer to the libel, but in the amended petition praying the benefit of the limited liability acts of Congress filed by the claimant of the Dumois the middle of the stream is declared to be the proper place for a descending steamer, but we apprehend that notwithstanding the

above evidence, and the last judicial averment by the claimant on this subject he will again contend her proper place was on the west shore of the river. This contention is evidently based on the 25th article of act of August 19, 1890, to adopt regulations for preventing collisions at sea, as amended by the acts of May 28, 1894, and August 13, 1894, and June 19, 1896, and proclaimed by the President of the United States to take effect July, 1897, but this act has no application whatever, for the date of its taking effect was July 1, 1897, while the collision took place before that day, to-wit: on January 28, 1897.

Nor does the act of March 3, 1885, or any of its provisions destroy or interfere with the usual custom of the descending vessel taking her course in the middle of the river, or attempt to fix the proper position of the descending vessel, for it has no application to the facts of this case. Its last clause exempts its operation from the navigation "within the harbors, lakes and inland waters of the United States.

It is true it is contended there were no such laws relating "to the harbors, lakes and inland waters of the United States," but unfortunately, for that contention and the decision in the 44 U. S. Ap., 353, directly the opposite has been decided by the Supreme Court of the United States in the case of the Delaware, 161 U. S., p. 459, decided March 2, 1896. At page 463 the court says:

"The International Code for preventing collisions was first adopted by act of April 29, 1864, incorporated into the Revised Statutes as section 4233, and was made applicable generally to the 'vessels of the navy and of the merchant marine of the United States.' This code remained substantially unaffected by congressional legislation until March 3, 1885, when the Revised International Regulations for preventing collisions at see were adopted by act of Congress, and made applicable to 'the navigation of all public and private vessels of the United States upon the high seas and in all coast waters of the United States.' By section 2, all laws inconsistent with

these rules were repealed, except as to the navigation of such vessels within the harbors, lakes and inland waters, the original code of 1864 still remains in force, explained and supplemented by the rules of the Supervising Inspectors. The Act of 1885 did not attempt to draw the line between the high seas and the coast waters of the United States, on one hand, and the harbors and inland waters, on the other. Nor was it possible by any general rule of legislation to do so. We are of opinion, however, that the dredged entrance to a harbor is as much the inland waters of the United States within the meaning of this act as the harbor within the entrance, and that the real point aimed at by Congress was to allow the original code to remain in force so far as it applied to pilotage waters, or waters within which it is necessary for safe navigation to have a local pilot."

Again, at page 464, the court said:

"The recent legislation has not only established the proper practice for the future, but has explained what must have been the intention of Congress in passing the original act. By act of February 19, 1895, c. 102, 28 Stat., 672, to adopt special rules for navigation of harbors, rivers and inland waters of the United States, these waters are declared to be still subject to the provisions of Rev. Stat., Sec. 4233 (the original code) and to the regulation of the Supervising Inspectors."

This act will be more fully noticed hereafter, but the above is sufficient to show that the article in neither the act of 1885, or in that of 1890, with its supplements, has any application to this case as to the path of the descending vessel, but that the custom of the descending vessel pursuing the middle of the river is in full force in this case.

In further pursuing this question of fault, it will be necessary to determine, first, what lights each vessel should have carried; second, what are steering rules that should govern vessels in passing each other on the Mississippi river in the night time at the point in the river where this collision occurred; and, third, what signals said vessels should have given each other.

AS TO THE RULES OF NAVIGATION.

And here it is proper to note that the rules prescribed by the Board of Supervising Inspectors of Steam Vessels, to be found at page 82 of said rules (pamphlet of January, 1896), have no application to the facts of the collision in this case, which occurred 80 miles below the lower limits of the City of New Orleans, for it is perfectly clear from a mere inspection of Rule XIV of said rules, that said rules have no application whatever in the present case. Said rule declares:

"The line dividing jurisdiction between pilot rules on western rivers and harbors, rivers and inland waters at New Orleans shall be the lower limits of the city."

Nor do the Pilot Rules prescribed by said Board of the Atlantic and Pacific Coast Inland Waters control, for the preamble to said rules expressly declares the rivers flowing into the Gulf of Mexico are exempted from the operation thereof. See page 73, of said rules. And the last clause of Rule IX of the rules last named, still further emphasises the fact that the "Pilot Rules for Western Rivers" does not apply, for, it declares:

"The line dividing jurisdiction between pilot rules on western rivers and harbors, rivers and inland waters at New Orleans, shall be the lower limits of the city."

But it does not follow that the part of the Mississippi river from the lower limits of the City of New Orleans to the Gulf of Mexico, is exempt from the operation of any rules whatever, for this case had been provided for by Congress, by act approved February 19, 1895, the first section of which declares, in substance, that on and after March 1, 1895, the provisions of Sections 4233, 4412 and 4413, of the U. S. Revised Statutes and regulations pursuant thereto should be "followed on the harbors, rivers and inland waters of the United States," and the provisions of said sections, and regulations pursuant thereto, were thereby declared special rules duly made by local authority relative to the navigation of harbors, rivers and inland waters as provided for in

Article 30 of the Act of August 19, 1890, entitled, "An act to adopt regulations for preventing collisions at sea."

Under the second section of this act of February 19, 1895, the Secretary of the Treasury was directed to designate and define the lines dividing the high seas from rivers, harbors and inland waters:

"New Orleans harbor and the delta of the Mississippi river, South Pass East Jetty light N. ½ East to Pass a Loutee light, thence N. to Errol Island and from South Pass East Jetty light W. ⅞ S. to the Southwest light, thence N. to shore."

All above this line is "rivers, harbors and inland waters" up to the lower limits of the City of New Orleans.

And said Section 4233, which prescribes the rules which are to govern on said harbors, rivers and inland waters, is as follows:

"Sec. 4233. The following rules for preventing collisions on waters, shall be followed in navigating of vessels of the navy and in the merchant marine of the United States."

And herein, first as to

LIGHTS.

Rule 3. All ocean-going steamers, shall, when under way, carry:

(A.) At foremast head, a bright white light, visible on a dark clear night 5 miles, etc.

(B.) On the starboard side, a green light, visible on dark clear nights at least 2 miles, etc.

(C.) On the port side, a red right, visible on a clear night at least 2 miles, etc.

The green and red lights are to be fitted with inboard screens, projecting three feet forward from the lights so as to prevent them from being seen across the bow.

Rule 5. All steam vessels, other than ocean-going steamers, and steamers carrying sail, shall, when under way, carry the starboard and port side lights of the same

character and construction, and in the same place as are prescribed for side lights by Rule 3, except in case of Rule 6.

Said Rule 6 relates to river steamers (steamboats) navigating waters flowing into the Gulf of Mexico, etc., and provide for signal lights to be carried on the outside of each of the vessel's smokestaks, and by the following rule:

"Rule 7. All coasting steam vessels, other than ferryboats and vessels otherwise expressly provided for, navigating the bays, lakes, rivers or other inland waters of the United States, except those mentioned in Rule 6, shall carry the red and green lights as prescribed for ocean-going steamers; and, in addition thereto, a central range of two white lights, the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel. The head light shall be so constructed as to show a good light through twenty points of the compass, namely: from right ahead to two points abaft the beam on either side of the vessel; and the after light so as to show all around the horizon."

Such are the provisions of law as to the lights which a vessel of the kind of the Argo should carry, but it is the colored lights alone that are to control the pilots, and hence the importance of their construction and location, which is laid down at page 81, of said regulations, as follows:

"The manner of fixing the colored lights should be particularly attended to. They will require to be fitted each with a screen of wood or canvas, on the inboard side, and close to the light, in order to prevent both being seen at the same moment from any direction but that of right ahead (not 4 points, page 251, or 4 inches, on the surface of the compass, without telling how big the compas is, as Pilot Lumbard of the Dumois, page 252, would have us believe) to two points abaft the beam.

"This is important, for without the screens any plan of bow lights would be ineffectual as a means of indicating the direction of steering. This would be readily understood by reference to the preceding illustrations,

where it will appear evident in any situation in which two wessels may approach each other in the dark, the colored lights will instantly indicate to both the relative course of each; that is, each will know whether the other is approaching directly or crossing the bows either to the starboard or port.

"This intimation, with the signals by whistle, as provided, is all that is required to enable vessels to pass each other in the darkest night with almost equal safety as in broad day."

And herein as to the rules for:

STEERING AND SAILING SAID VESSELS,

which is Rule 18, and is as follows:

"Rule 18. If two vessels under steam are meeting end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other."

And herein as to the directions that are to control pilots as to the

SIGNALS OR WHISTLES TO BE GIVEN.

Among the "regulations pursuant" to the foregoing sections—and especially Section 4413 – of the Revised Statutes of the United States are those to be found on pages 78, 79, 80 and 81 of said regulations of "Supervising Inspectors of Steam Vessels" where various diagrams and illustrations with directions as to what shall be done in each case, including the whistles that are to be blown.

The first situation with diagram, is when the colored lights are visible to each, which indicates the approach head and head (and by note to be found at page 73, it is stated that "in the night steamers will be considered as meeting 'head and head' so long as both the colored lights are in view of the other").

"In this situation it is a standing rule that both shall put their helms to port and pass to the right, each having previously given one blast of the steam whistle."

This is the situation of the vessels in this case as detailed by the Dumois.

The second situation, with a diagram, is where the green light is visible on each steamer (which, according to the evidence of both sides, is not the present suit, at least not until after the signal had been given. They—the vessels—are, therefore, passing to starboard, which is rulable in this situation, each pilot having previously signified his intention by two blasts of the steam whistle.

The third situation, with diagram, is where the red light only will be visible (which is the situation described by libellant's witnesses) to the pilot of each steamer. Both vessels are evidently passing to port, which is rulable in this situation, each pilot having previously signified his intention by one blast of the steam whistle.

The fourth situation, with diagram, is where the steamers are approaching each other on oblique courses and the green light of the descending steamer would be visible to the ascending steamer, and the red light of the ascending steamer would be visible to the descending steamer. This is not the present case.

The fifth situation, with diagram, is where the green of the ascending boat is visible to the descending boat, and where the red light of the descending boat is visible to the ascending boat.

This is the situation in this case, *after* the Dumois swung out and attempted to pass in front of the Argo. This situation the regulation (pages 79 and 80) says requires great caution, and that the ascending boat should put her helm to port and pass astern of the descending boat, while the descending boat should continue her course, or port her helm if necessary to avoid collision.

It will be observed that in the first situation (the one claimed by the Dumois) and in the fourth and fifth, the language of the rules that are to govern the action of the pilot, is different from the other situations, and in this. In the first situation the rule is said to be a "standing" one—that is invariable, not to be departed from—and in the fourth and fifth situations the rule is that the vessel that has the other on her starboard bow "should put his

helm to port and pass astern" of the other, while the one that has the other on her port bow "should continue on her course or port his helm if necessary. In the other situations the action of the pilot there described is merely said to be "rulable," that is, permitted by the rule. In the one case the direction is peremptory, while in the other it is discretionary.

The substance of the rules is well summed up in the following ditty, which is well known to every experienced seaman:

"When both side lights you see ahead
Port your helm and show your red,
Green to green, and red to red,
Perfect safety, go ahead."

APPLICATION OF THE ABOVE RULES TO THE FACTS OF THIS CASE.

In the first place it is proper to observe that neither party was in fault as far as their lights were concerned. It is true that in the answer of the Dumois, as well as in the petition claiming the benefit of the Limited Liability Act, it is stated the head light of the Argo (called the masthead light) was too low, and only a few feet above the plane of the red and green lights, and hence was confusing, but there is no complaint that the lights were not burning brightly, that they were not seen at a long distance off, or that any one was mislead thereby, and even if there was, said lights were located strictly according to law. Captain Brown and his lookout saw the lights on the Dumois about three-fourths of a mile or more distant, while the mate of the Dumois, who was on the bridge with the pilot, as also the man at the wheel, saw the lights of the Argo half a mile or more distant. And certain it is that the Argo had such lights as the rules prescribe even though the court intimates the contrary (p. 337). Her inspection papers so declare. The only complaint is, that the masthead light (as it is called by the Dumois) was but a short distance above the signal lights, but under the rules, she was not required to carry

any masthead light at all. The confusion in the mind of the claimant of the Dumois (if there is any) is based upon a misunderstanding of the Argo and the rule governing her lights and the place where they should be carried. The Argo was not an ocean-going steamer, or a steamer carrying sail—such as is provided for in said Rule 2 of Section 4233 of the U. S. Rev. Stat., and was therefore not required to carry a masthead light, but was a steam vessel other than ocean-going and did not carry sail, but was provided for in Rule 5, and was required to carry the red and green side lights of Rule 2, and being licensed for the coasting trade, and permitted by her inspection papers to navigate "Lakes, bays, sounds and rivers," she came under Rule 7, and was required to carry the red and green lights prescribed for ocean-going steamers, and in addition thereto a central range of two lights; the after light being carried at an elevation of at least 15 feet above the light at the head of the vessel (not the masthead light), the head light to be so constructed as to show a good light through 20 points of the compass, from right ahead to two points abaft the beam on either side (the picture of the Argo shows this light with its screen), and the after light to show all around the horizon. The side lights and the after light are not complained of, but only the improperly called masthead light, which was on the forward part of the pilot house and was proper, and not in violation of any rule.

But the highness or the lowness of the head, or white light, on the Argo can in no sense be an excuse for the pilot of the Dumois in not seeing the Argo before he even did, nor for his conduct in crossing the river in front of the Argo, for it is the red and green lights alone that are to control vessels in passing each other, as the regulations hereinbefore given declare, and concerning which the Supreme Court of the United States, in BELDEN CHASE, 150 U. S., at page 693, said:

"The importance attributed to the red and green lights is apparent through these rules (of navigation), and in the rules and regulations of the board of supervising inspectors. After diagrams are given in illustra-

tion of the working of the system of such lights, it is here said that by reference to them it will appear evident that in any situation in which two vessels may approach each other in the dark, the colored lights will instantly indicate to both the relative course of each; that is, each will know whether the other is approaching directly or crossing the bows either to starbord or port.' This intimation, with the signals of the whistle, as provided, is all that is required to enable vessels to pass each other in the darkest night with almost equal safety as in broad day."

Even the absence of any light, if it does not cause or contribute to the collision, does not render such vessel liable for the collision, 3 Fed. Rep., 870; 9 Fed. Rep., 666, and the same is true of the absence of a lookout, 16 Wall., 334; 23 Wall, 69; 96 U. S., 600; 17 Wall., 243; 2 Wod.. 258.

And the same law applies to the statement of the court made after it had alread decided the case, "that it was hardly necessary to add that, at the time she was short of her regulation crew", for the evidence shows the only men short, were two deck hands, whose places were filled by Hester and Blesine, (both competent, pp. 169 and 170), and if said "deckhands" had been on board they would, at the time, have been below and asleep, pp. 65 and 66. There was nothing unusual, and certainly nothing wrong in having the representatives of the charterer become part of the crew, and there can, in this case, be no complaint of the fact, because it did not contribute to the collision, for the Dumois lights were seen by the lookout and master of the Argo (who under Sec. 4443 of the Rev. Stat. was also her pilot) three quarters of a mile distant.

The red and green lights of the Argo having been seen at least half a mile or more distar t, what under the circumstances was the duty of the Dumois?

We think we have demonstrated that the Argo was in mid-stream and the Dumois toward the east shore of the river. In that event, it is plain under the rules that it was the duty of each vessel to sound one blast of their

whistle and pass to the right of each other, and hence the Dumois in attempting to pass on the opposite side was in grave fault and solely responsible for the collision.

But suppose that we have not shown when the boats first saw each other they were as above stated, and say that the evidence of the master at the wheel and his lookout on watch, that of his engineer and steward, and the evidence of Jurish and Deedes who witnessed the collision from the river bank, the finding of the wreck of the Argo, which never changed her position from east to west from the time the vessels struck until she sank to the bottom 500 feet from the west shore where it now lies, say all these facts are to count for nothing, the question then arises where were they? The mate of the Dumois says she was 500 feet from the eastern bank, while the evidence of those connected with the luggers shows they (the luggers) did not extend more than 40 or 50 feet from the eastern shore, to which they were tied, and this would leave 450 feet clear between the Dumois and the luggers, or more than twice the length of the Dumois, and more than ten times her width of beam. Now, the mate and pilot of the Dumois testify they saw both signal lights of the Argo (which the regulations say is "head and head"), and that she was dead ahead, or about dead ahead, and half a mile distant. What under the circumstances was it her duty to do?

Rule 18, above given, answers this in the following language:

"Rule 18. If two vessels under steam are meeting end on, or nearly end on, so as to involve the risk of collision, the helms of both shall be put to port" (the very thing which the pilot of the Argo did, while the pilot of the Dumois did the very opposite) "so that each may pass on the port side of the other."

And the diagram and illustration given by said Board of Inspectors of Steam Vessels will demonstrate what the result would have been had this rule not been violated by the Dumois. Who then was in fault, according to the location and position of the vessels as given by the Dumois? Captain Brown says he blew the signal

required under this rule, and so say his lookout, engineer and steward, and so say all the witnesses who were spectators of the collision on the shore—Deedes, Jurish, and even this old man Theodore. And this the court finds to have been the fact. The Argo, in all respects, observed this "standing rule," blew the whistle required thereby, and ported her helm as required, and was therefore not in fault.

It is true the pilot of the Dumois says there was but a ship's length between her and the eastern shore, and not sufficient room for him to pass the Argo on his left, but if that were true it would not justify his action in thrusting his ship across the course and bow of the Argo. But is it true? His mate, who knew the length of the ship better than the pilot, says there was 500 feet between her and the bank, and this evidence (and by an officer of the ship) we prefer to that of a man who pretends to be a skillful pilot, and who only knows a point on a compass, as an inch on its circumference, and cannot tell how many degrees there are in a point, and who says that vessels meeting each other would have to change their courses 4 points (45 degrees) in order that one of the signal lights might disappear.

It is also true that the witnesses from the Dumois swear they did not hear the Argo whistle before the Dumois blew her whistle, but if they did not, it was because they did not attend to their business, for not only was the signal given by the Argo, but immediately preceding it there was a like signal blown by the Argo to the tug Day Dream, and properly answered, and at a time when the latter was nearer the Dumois than when the Argo blew, and yet none of these whistles (which were certainly sounded, were heard on the Dumois, and if not why not? Simply, because the parties on the Dumois who should have heard them—the pilot and mate—on this cold and freezing night were under cover where they could not be heard. The parties who probably did hear them (the first man at the wheel—and strange to say there was a change of the man at the wheel after the collision became imminent—and the

lookout and an another sailor man on the bow of the Dumois at the time) have not been produced or examined by the Dumois. They were present and eye-witnesses to the whole affair, and, in fact, participants therein. Why have they not been produced and examined?

Nor can the Argo be found in fault for being, as the mate of the Dumois claims (and which we deny), 500 feet from the eastern bank, and especially with the wind blowing strongly from that bank, where she would find the most quiet water. The only law that controled her was said Rule 18 of Rev. Stat. of the U. S. (and not the Pilot Rules of the Western Waters), under which either wessel had the right to whistle first, whereby the one so doing became the preferred vessel, when, as said rule of the statute declares, "the helms of both shall be put to port so that each may pass on the port side of the other." If the Dumois, 500 feet from the eastern bank, had not seen the signal lights of the Argo as soon as she did and recognized her as an approaching steamer half mile distant, with plenty of time to port her helm and space within which to make the manœuvre, had kept her course—when no collision would have happened—the custom, under ordinary circumstances requiring the descending boat in the middle of the river might count for something in this case, but the Dumois not being deceived, and the Argo being seen in ample time for both vessels to make the manœuvre required by the statute the one vessel that thus glaringly and openly violates the law is solely in fault, no matter what the custom is. The law controls in this case and not the custom. In other words, the Argo's not being (if such is the fact) in the place in the river where the custom required, where she under ordinary circumstances should be, but being seen by the Dumois dead ahead, and in ample time, and the Argo having (as the evidence shows and as the court finds) given the first and proper signal and helm, the Dumois after seeing said Argo and giving an improper signal and helm, whereby the collision was occasioned, the Dumois alone is responsible, for the primary cause

of the collision was not the fact that the Argo was 500 feet from the eastern shore when recognized as a descending steamer, but the Dumois' open violation of a positive act of Congress, forbidding her to do the very thing she did do, and for which not even any custom would excuse her.

Nor can it be said the Argo was in fault because of the speed she was going. The river was about half a mile wide, the night was clear, there was no crowd of vessels, and the errand on which she was proceeding was quasi public in its nature, to-wit: to carry newspaper reporters to meet a Congressional Committee to the jetties, who had already preceded the Argo on the steamship Whitney, and whom it was necessary to overtake to secure their proceedings and report the same for the public press.

But apart from the nature of her errand and the necessity for the speed with which she was proceeding there was no restraint by law or otherwise upon her rate of speed, because, as before stated, the night was clear, there was no crowd of wessels, and the water space was ample.

The only circumstances under which a steam vessel is required to slacken her speed, or stop, or back, is when she is approaching another vessel and there is risk of a collision, or where there is a fog. This is stated by the Rule 21 as follows :

"Rule 21. Every vessel approaching another vessel, so as to involve the risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam vessel shall, when in a fog, go at moderate speed."

But apart from its provision in reference to fog, this rule contemplates the case of a steam vessel approaching another vessel on their regular courses and not the case of one vessel suddenly throwing herself across the pathway or course of another vessel. In other words it is a direction to a vessel approaching another vessel where the courses are converging, and does not contemplate vessels approaching each other on parallel courses, for here there is no "risk of collision" involved. This is

shown by the fourth and fifth illustrations and diagrams on pages 79 and 80 of said regulations.

The fallacy of the contrary will appear by taking the case of two carriages approaching each other from opposite directien on the same highway. Each is in its proper place for passing and each is going rapidly, when suddenly the one shoots across the road right in front of the other approaching from the opposite direction and a collision occurs. Surely no sane person would contend that the latter was in fault for not slackening its speed or stopping, or backing, before the collision occurred, and especially when there was nothing to indicate that such an insane move would be made before it actually was made. The rule will be best illustrated by reference to carriages approaching on converging highways, when it will be the duty to slacken, and perhaps to stop and back, because here there is risk of collision.

This matter has been frequently passed upon in this country and in England, and many of the cases are collected by Circuit Judge Emmons in the case of The Free State, 1 Brown's Admiralty Rep., 251, and among those given are the following:

"The Rob Roy ran down the Unicorn, going at full "speed until she was in such close proximity that the "attempt to stop was useless. The green light of the "Unicorn being extinguished, and the red light hid on account of her course, she was mistaken for a small craft. The Rob Roy ported, as she should have done had the "vessel been what the light indicated. Dr. Lushington "excused the Rob Roy for not slowing speed, becanse he "says the lights which the Unicorn displayed indicated it "was safe to do so."

In this case it is further shown that all of the rules above referred to are but declaratory of what the law was before said rules were adopted, and at page 262 said:

"The law, before the statute, was that declared by it; and therefore the rule as to slowing would be the same under the one as the other. Ought she to have slackened her speed sooner than she did? Whether the light she saw was on a steamer or on a sailing vessel,

no duty to slacken speed or to change the course of the Scotia arose until there was reason to apprehend a collision. The suggestion that it was her immediate duty to slacken speed when she saw the light, assumes what at first instance is not to be assumed. If she saw the light and observed it diligently, without having reasonable ground for apprehending a collision, no duty to slacken speed, or even change her course, was created."

And the judge further observes:

"It was not intended to change the rule of the road so far as any duty in this case was concerned, by the adoption of these articles. The regulations they establish are as old as steam and modern improvements in navigation."

And still further said:

"That the so-called 'Golden Rule' of porting and passing to the right was established before the Act of 1864; see St. John v. Paine, 10 How., 583; the Nimrod, 15 Jurist, 1201; Story on Bailm, 611; The Duke of Sussex, 1 Wm. Rob., 274; The Rose lays down the rule stringently, 1 Pars. Adm., 569, and note 4; and fully affirming the rule, see New York Co. v. Navigation Co., 22, How., 461, citing some of the leading English and American judgments. The Supreme Court says the rule is well established."

And at page 264, at the bottom, the court further said:

"A very large majority of all the decisions in reference to collisions, both English and American, assumed as well settled this principle, that actual perceived danger alone demands the duty of slacking speed."

This case of The Free State went to the United States Supreme Court, where the decision of the Circuit Court was affirmed and the above doctrine reiterated in the 91 U. S. R.. p. 200, where that court said at p. 206:

"If two steamers are meeting each other end on or nearly so where there is plenty of sea room, and at considerable distance from each other, it is not the duty of either to stop, reverse, or to slacken. The duty of each is to pass on the port side, and the rate of speed is not an

element in the case. The risk of collision is not present under such circumstances."

Rule 18, as to steam vessels meeting end on or nearly so, so as to involve risk of collision, is the same as Rule 16, as to sailing vessels meeting end on or nearly so, and the decisions in this country and in England are numerous, that when the vessel not observing this rule is condemned without regard to the one porting, not having stopped before the collision occurred. Two English cases are given by the court in The Free State, 1 Brown's Admiralty, page 265, as follows:

"The Cognac (Holt's Rule of the Road, 133). Two vessels approached end on. The one followed the rule and ported, but the other suddenly starboarded, and brought about the collision. Dr. Lushington pronounced against the offending ship, although the other was proceeding under full steam; no criticism whatever was made upon the rate of speed.

"The Concordia (Holt, 142). So far as this question is concerned, the facts are substantially the same as those in the Cognac. For a faulty starboard movement, the Concordia was condemned for the whole damage, although the other vessel was proceeding with rapidity up to the moment of the collision."

On this subject of a faulty starboarding of the helm, see also The Maggie J. Smith 123 U. S. R., p. 353, and the cases of the United States Supreme Court there summarized as follows: The Nichols, 7 Wall., 656; The Dexter, 23 Wall., p. 69, and the Annie Lindsly, 104 U. S., p. 185. In the case of the Maggie J. Smith, at page 355, the court said:

"Nor is there anything in the position that, when two vessels are approaching in opposite directions so as to involve risk of collision, and one of them violates the rule of navigation in directing its helm, and the other vessel sees it, she will be in fault if she does not also turn her helm so as to avoid the consequence of such departure from the rule."

Again, take the positions of the vessels after they had changed their courses—that is after the Argo ported

and gone to starboard, and the Dumois had starboarded and gone to port across the path of the Argo, what was then the duty of the Argo and what that of the Dumois? The regulations and illustrations of the Board of Supervising Inspectors, at pages 79 and 80 answer, that it was the duty of the Dumois to put her helm to port (not to starboard as she did) and pass astern of the Argo (directly the contrary of what she did do) while it was the duty of the Argo to continue on her course or port her helm if necessary to avoid the collision, both of which she did do.

It is therefore clear Captain Brown, in all respects, observed Rule 18 of Sec. 4233 of the Revised Statutes when he blew one blast of his whistle and ported his helm to pass to his starboard, and that Lumbard, the pilot of the Dumois, violated this law when he blew two whistles, starboarded his helm and put his vessel across the path of the Argo, and before she can excuse herself she must show that this breach of the law did not and could not have caused the collision. This was directly declared in Belden vs. Chase, 150 U. S. R., p. 699, as follows:

"And while under Rule 24, in construing and obeying the rules, due regard must be had to all dangers of navigation and to any special circumstances which must exist in any particular case, rendering a departure from them necessary in order to avoid immediate danger, the burden of proof lies on the party alleging that he was justified in such departure. The Agra, L. R. 1 C., 501; The General Lee, Irish L. R. 3 Eq., 155. Indeed, in the Agra, it was ruled that not only must it be shown that the departure at the time it took place was necessary in order to avoid immediate danger, but also that the course adopted was reasonably calculated to avoid that danger. *And it is the established rule in this court that when a vessel has committed a positive breach of statute, she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so.* The Pennsylvania, 19 Wall., 126, 136; Richelieu Navigation Co. vs. Boston Insurance Co., 136 U. S., 408, 422."

See also The Britannia, 155 U. S., page 143, where the above doctrine is declared and the latter part of the above paragraph is quoted in full. See also The Victory vs. The Plymothian, 168 U. S., p. 428.

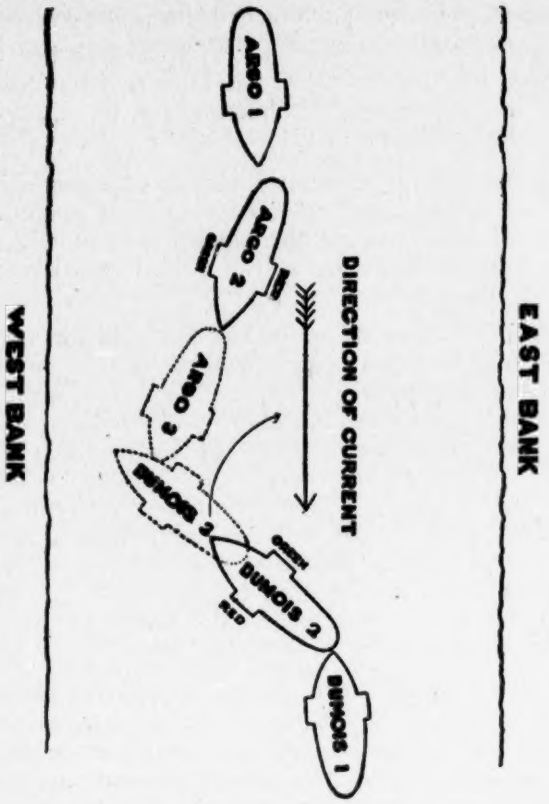
Rule 24, above referred to and which is invoked in this case, was discussed by the United States Supreme Court in The Maggie Hammond, 123 U. S., page 349, where the court said :

" The rule applies only where there is some special cause rendering a departure necessary to avoid immediate collision, such as the shallowness of water, or a concealed rock, the approach of a third vessel, or something of that kind."

None of these things prevail here, for the enlarged chart shows from 26 to 45 feet of water right up to the eastern shore, and the evidence shows the Day Dream and the lugger alongside of her only occupied from 40 to 50 feet, which would leave plenty of room for the Dumois to pass to the westward of the Day Dream and its lugger. Certain it is, that under no circumstances was it necessary for her at any time to have shot out in the river to the middle thereof where she says the collision took place, to pass said luggers and Day Dream, even if these latter, tied to the shore, are to be considered as "the approach of a third vessel," which we deny.

Even if, according to the theory of the Dumois, it was necessary for her to swing out in the river to pass the Day Dream and luggers, she then had the Argo on her own starboard bow and then it became her duty to keep out of the way of the Argo, and to do so, she should have ported her helm, and gone to the starboard at least after she was far enough out to clear said Day Dream and luggers, while the Argo should have con-

tinued her course as she did, and no collision would have been possible, as the following diagram will show:



The court quotes extracts from the evidence of Captain Brown to show he was in fault in not stopping his vessel and reversing, but—we think—it fails to appreciate, certainly to note—what we also think—is a very satisfactory reason for doing so. After stating that not 15 seconds elapsed from the time the signals were crossed by the Dumois (p. 63)—which was the beginning of the danger—to the time the vessels came together,

and that the Argo's speed could not be perceptably checked in that time, and in stead of stopping and backing, at p. 64 further said: "I thought when he rang the alarm and reversed that he would stop the headway of his ship and get me clear of him, the velocity I was going, him 10 miles an hour and me going 20 miles an hour. * * * And at page 65 said:

Q. When he crossed your signal, and you blew the single blast and put your helm hard aport, if you had undertaken—could you then, owing to the closeness which the vessels were together, could you have stopped and avoided a collision? A. No, sir, it was impossible.

Q. What was your judgment when you blew your whistle the second time and put your helm hard aport, as to what was best that could be done under the circumstances? A. That was to go ahead.

Q. Then I understand you to say, that, considering all the circumstances, the closeness of the vessels together, that it was your judgment, then and there, that the best for both to have done was for you to go ahead and throw your vessel to the starboard, put your wheel aport and throw it (vessel) to the starboard? A. Yes, sir, my judgment called for that in a tight place like that.

And yet the court says, "the master of the Argo (without telling why) believing in the speed of his vessel, and that he could run around and pass to the right of the Dumois in any event kept his course until he struck the Dumois and sunk his vessel." And that the master was justified in his belief, that the Argo (after the crossing of the signals by the Dumois,) could not have stopped and thereby avoided the collision, is also shown by the evidence of Orkney, the engineer, who, at page 73, said, the Argo would run half a mile after steam was shut off, and that, even if shut off and the engine had been reversed, there was not time, after the Dumois blew two signals crossing the signal of the Argo, for the Argo (which he says was making 200 turns per minute and 18 miles per hour) to have avoided the collision by stopping and backing.

And, as we have hereinbefore shown, after the Dumois crossed the signal and headed to cross course of the Argo, under said Rule 19 of Sec. 4233 U. S. and the regulations and illustrations of the Board of Supervising Inspectors, it was the duty of the Dumois to port "her helm and pass astern of the Argo, *while the Argo should continue on its course or port its helm*," but not to stop and back. This is the very opposite of what the court says was the Argo's duty to do.

One of the latest decisions in a collision case is that in the New York Connemaugh case, decided by the United States Circuit Court of Appeals, for the Sixth Circuit, and reported in the 82 Fed. Rep., p. 819. This collision occurred in the Detroit river, a short distance below the City of Detroit, and at a point where the river (according to the chart) was a little over half a mile wide, and resembles the collision in this case, and especially in the situation and relation of the colliding vessels just before the collision, when Rule 19 of said Sec. 4233 was applied. It gave the New York the character of the preferred steamer, and it does the same for the Argo, and more especially after the Dumois starboarded her helm, because the rule declares the vessel having the other on her own starboard must keep out of the way of the other, the very opposite of which the Dumois did.

In the New York case both vessels were on a port helm just before the collision, the Connemaugh following the tow. The latter signaled three different times for permission to pass to the starboard instead of the port side, and without receiving the consent or a reply of any kind, starboarded her helm and ran across the bows of the New York. Counsel contended that the New York, if she did not give consent to a starboard helm on the part of the Connemaugh, the signals of two blasts of the whistle, repeated by the Connemaugh three times, should have been answered by one blast of the New York's whistle; but the court holds the Connemaugh had no right to starboard under the circumstances, and that this was not a case where "silence gives consent," and that the New York was not obliged to give such signal.

The vessels were on parallel courses, says the court, and would have passed each other safely had the Connemaugh held her course, which the New York had a right to expect she would do. It was contended the Connemaugh was in danger of running into the tow of the Burlington (intervening between the two vessels) by holding her course, and that a starboard helm was necessary, and that under said Rule 24 she had a right to depart from rules and starboard her helm; but this claim was not allowed, although the Connemaugh was very close following upon the tow which she was seeking to avoid. The tow, then, in the New York case, represents the part counsel for the defense in this case seeks to make the luggers play. It is not disputed that the luggers were made fast to the shore. The Dumois claimed when she blew her signal of two blasts, which the Argo answered with one, that she wanted to go to port, but the Argo's one blast was notice to her that she did not have said Argo's consent and a declaration that the Argo would hold her course.

The Dumois claimed when she first sighted the Argo the vessels were half a mile apart, and hence the Dumois was half a mile from the luggers when she starboarded her helm. This, then, was the danger, and the only danger set up in justification for violating the rules to prevent collisions. We can see some excuse for the starboard helm of the New York with the Connemaugh running close in the wake of a tow, for naturally the master would want to get out of such a position; yet the court decided he had no right to starboard his helm without the consent of the New York.

There was a very good reason why the New York should not be required to consent to the change of course on the part of the Connemaugh. The parallel courses —both vessels having the other's red light—did not involve any risk of collision. The change the Connemaugh asked to make would endanger the New York, and she was not required to place herself in danger to take another out. The Connemaugh changed her course without the consent of the New York, and of the two

evils took what must have appeared to her was the least, and in doing so ran across the bows of the New York and was lost. To uphold the Connemaugh in this case would be equal to saying, to get out of the danger of hurting A you can take a desperate chance of injuring B, and B, not knowing of your intention, must sufter if he does not keep out of the way, notwithstanding B is doing nothing wrong and is going ahead about his business in a lawful way. This is not the law. Rule 24 authorizes a departure from the previous rules of the collision act to avoid immediate danger, but it does not justify injuring someone else to save yourself, and then have the innocent stand the damage.

But when the position of the luggers in the Argo case is considered as playing the part of the tow in the New York case, the proposition is absurd. The Dumois had lots of room—she was not within half a mile of the luggers when she sighted the Argo and starboarded her helm. The luggers were tied to the bank and the Dumois had an abundance of room and water to pass without changing her course at all. It is very certain it was not necessary to cross the middle of the river and the course of the Argo to avoid the luggers, as the court would have to find to excuse the Dumois for her starboard helm. There was a space of at least 1,150 feet between the course of the Argo and the luggers, and with no obstruction in the way there was no necessity for crossing the bows of the Argo, and Captain Brown could not be expected to anticipate such an insane move on the part of the Dumois. Even after the Dumois had starboarded her helm, Brown had a right to expect the Dumois would not violate Rule 19, and to believe the Dumois would go astern of the Argo. On the whole, it would be hard to find a case more favorable to the Argo than the New York case, and that case holds the New York free from blame when she did just what the Argo did, to-wit, held her course and did not stop or attempt to stop. The Connemaugh had the New York on her starboard side, just as the Dumois had the Argo, after the former had starboarded and the latter had ported,

and the court holds it was the duty of the Connemaugh to keep out of the way, and the New York could not and was not bound to anticipate she would not do so. She had no right to try to cross the bows of the New York and might have gone astern of the tow, and the New York could not be held at fault for not stopping.

Again. A slight recalling of the facts as disclosed by the evidence on both sides will show how unfounded is the pretense of the Dumois that it was necessary to starboard her helm and run out into the river in order to prevent running into the luggers tied at the bank. According to the evidence of both sides the collision occurred below the place where the luggers were at the bank, and according to the evidence of the Argo she was to the westward of the course of the Dumois, and according to the evidence of the Dumois the Argo was dead ahead—both her signal lights being in view. Now, according to the evidence of either, the Argo having passed the luggers before the collision occurred, why was it necessary for the Dumois to starboard to pass the luggers, which the Argo had already passed?

And equally unfounded is the assertion that the Argo, because of her speed, was a dangerous craft, and hence a menace to commerce. Such an argument would absolutely prohibit any improvement in the speed of vessels and would render the modern steam vessel an impossibility.

Equally unfounded is the statement that the "Argo was not constructed so that her speed could be checked when required by the rules of navigation, or that she could be backed within any reasonable time after sighting danger." All there is in the case on this point is what is stated in the pleadings, to-wit, that her backing power was slight (but there is neither allegation nor proof of any kind that she could not stop and back as alleged), but this means that her backing power was slight as compared with her power or ability to speed ahead, and this is true of all fast steamers. They are made to steam ahead. The shap of the hull, and especially that of the bow as compared with that of the stern,

the construction of the propellers—speed wheels—and in fact the entire construction of the vessels indicate this. Like the Campagnia, the Lucania, the Teutonic, the Majestic, the St. Louis, the St. Paul, and still later the wonderful William the Great, which sustained the wonderful speed of 22.35 knots for an entire passage across the ocean. Surely no sane person would for a moment contend these were dangerous and unfit to pursue their business because they did not possess the same facility to run 22 knots backward, as forward. It is true of every fast vessel that her ability to go backward is slight compared with her ability to go forward. One of the best proofs of what is here stated is the fact that the Dumois, whose forward speed, it is said, was only from nine to ten knots per hour when under full steam, was unable to stop her forward motion against a strong current, even after it is said her engines were reversed full speed astern, and continued her forward course way beyond the Argo, going up the river entirely out of sight, according to the evidence of her first officers three or four lengths, and according to the evidence of the Argo half a mile before she was stopped. But even the comparative slight backing power of the Argo under no circumstances would justify the Dumois in suddenly wrongfully and illegally thrusting herself across the bows of the Argo.

And the facts of the case show the Argo was not running as fast as her master imagined, nor "recklessly" as the court observed, for the night was clear and there was plenty of water and no crowd of vessels. She left New Orleans on the evening of January 27, 1897, at 7 p. m., and had hastened all the way. The collision occurred a few minutes past 12 o'clock, and the point of collision, as shown by defendant's pleadings, was 85 miles below the city, while the map shows it was less than 80 miles, and this would give her speed at 16 miles per hour, or the speed her builders—Herreshoffs—say she was capable of making, and this would be in these times ordinary speed for any steam craft unless it was a scow or a tub.

It is therefore clear that neither Rule 21, as to slacking speed or backing, nor Rule 24, in reference to varying from the general rule in special cases, have any application to the facts of this case, for there was no danger of collision when the Argo blew her first whistle, because at that time, as we have shown, the Dumois was to the Argo's left, as was disclosed by her red light, and according to the evidence of the Dumois the Argo was dead ahead, as was disclosed by seeing both of her signal lights, when under Rule 18 and the diagrams and illustrations on page 78, it was her duty to port her helm —just as the Argo did—and pass on the port side of the Argo, where there was no possible chance of a collision, and because there were no special circumstances in this case requiring such a departure.

The only possible risk of collision was when the Dumois crossed the Argo's signal and wrongfully threw herself across the course of said Argo—a thing which Captain Brown says (at page 58) no sane man would attempt to do, and which, after 40 years' experience on the river, he has never known anyone to attempt to do, when it was her duty not to have put her helm to star board as she did, but to have put it to port and passed to the left of the Argo. And if it is said she had to swing out from the eastern shore to pass the luggers, which we again deny (for the mate of the Dumois says she was 500 feet from the bank, and the luggers occupied from 40 to 50 feet, leaving 450 feet clear, and there was deep water right to the bank), then it was clearly her duty to have stopped and backed without changing her course, and not to have attempted to cross or swing out at all until the Argo had passed. (The Atlas, 10 Black ford, 459.) In any event her forward motion with a star-board helm was radically wrong, and at this point of time, when the Dumois did throw herself across the course of the Argo, she was so close to the Argo that the latter could neither slacken her speed or stop before the vessels would come together. This is apparent from the evidence of both parties. Steam might have been shut off, it is true, and the engine started backwards,

but, as the engineer of the Argo shows, even when this is done she would go forward for a long distance before her forward motion would be stopped, just as the Dumois did when she was reversed full steam backward.

Under these circumstances and at this instant of time, Captain Brown's judgment was that he might, by putting his helm hard to port and continuing his speed, pass in front of the Dumois, avoid the collision and prevent being cut in two, which he thought might occur if he tried to stop. In this, it is true, he was mistaken. But this judgment was forced upon him by a condition of things brought about by the Dumois. In other words, he was put in *extremis* by the conduct of the Dumois, and for any damage which might result from such judgment the Argo is not responsible, for the proximate cause of the collision was the conduct of the Dumois, and the mistaken judgment formed by Captain Brown while in *extremis* by reason of the wrongful conduct of the Dumois.

This principle has often been decided. In the Elizabeth Jones, the Supreme Court, quoting from an English case (Bywell Castle, 4 P. D., 249), said:

"When one ship has, by wrong maneuvers, placed another ship in a position of extreme danger, that other ship will not be held to blame if she does something wrong and has not been maneuvered with perfect skill."

See also the Maggie J. Smith, 123 U. S., p. 349. The Nacoohee, 137 U. S., p. 340. The Blue Jacket, 144 U. S., p. 391.

There can be no doubt of the fault of the Dumois in crossing the course of the Argo. This was in direct violation of Rule 18 of said Sec. 4233, and in direct violation of the "standing rule" on page 78 of the rules and regulations prescribed by the Board of Supervising Inspectors of Steam Vessels, of January, 1896, even if the Argo was dead ahead, "meeting end on," for the Dumois, according to the evidence of her mate on watch, was 500 feet from the eastern shore and there was ample room for each vessel to pass on the port side of the other, and the contrary move on the part of the Dumois is alone

sufficient to account for the collision. In this situation the language of the Supreme Court in the case of the Oregon, 158 U. S., at the bottom of page 197, is of great importance in this case:

"Where one vessel is clearly shown to have been guilty of a fault, adequate in itself to account for the collision, seeks to impugn the management of the other vessel, there is a presumption in favor of the latter which can only be rebutted by clear proof of a contributing fault."

As a result of the foregoing we think we have shown that from the time vessels came in sight of each other to the time of the collision the Argo was at no time in fault, and the Dumois, during all of said time, was in fault in everything she did, that is:

First. The Argo being the descending boat in the middle of the river, and the Dumois being the ascending vessel toward the eastern shore, said Argo was not in fault in blowing the passing signal of one blast of her whistle, and said Dumois was in gross fault in crossing the signal of the Argo with two blasts of her signal. See "Third Situation" and diagram on page 79 of said Pilot Rules.

Second. If the Argo was not in the middle of the river, but nearer the eastern shore, still she was not in fault in blowing a passing signal of one blast, to pass to the right, because both of her signal lights were visible to the Dumois ("head and head"—see said Regulations, p. 72), while the latter was 500 feet from said shore, giving ample room for the vessels to pass on the port side of each other, and the Dumois was in gross fault in crossing the signals of the Argo, starboarding her helm and crossing the Argo's course, and in doing so violated "a standing rule" of the Supervising Inspectors of Steam Vessels (a rule that has the force of a statutory enactment—Belden vs. Chose, 150 U. S., 698). See "First Situation" and diagram, page 78 of said rules.

Third. That the Argo was not in fault when she again blew her signal of one blast, still insisting in going to the right, and porting her helm accordingly.

Fourth. The Argo was not in fault under the circumstances in not slacking her speed, stopping or backing, not being in the sense of the law the approaching vessel, and not having, after she was cros-signaled by the Dumois, sufficient time to do either, because, as shown in the "Fifth Situation," it was not the duty of the Argo to slacken speed, stop or back, but to continue her course, as she did.

Fifth. If in the latter respect it should in any manner be claimed the Argo was in fault (which we deny), then she was put in extremis by the wrongful and sudden change of course by the Dumois in thrusting herself in front of the Argo, and for any want of proper maneuver on the part of the Argo (if such there was, which we also deny) the Argo is not responsible.

THE NEXT PRINCIPAL QUESTION IS, WHAT WAS THE VALUE OF THE ARGO, AND WHAT DAMAGE HAS THE LIBELLANT SUFFERED?

The petitioner complains of the decree of the Court of Appeals in as to said valuation.

First. Because the decree of the lower court is for too small an amount, and under the evidence should have been for at least $20,000 with interest from the date of the loss, to-wit, January 28, 1897.

Second. That in no event should the amount awarded libellant by said decree have been for less than $15,000 (on the basis of which one-half interest in said Argo was sold to be delivered the day after her loss), with interest from said date of loss on January 28, 1897.

In examining the facts on the question of damage and loss it is prosper to bear in mind the law on this subject, which, briefly stated, is as follows: It is not what A or B would have given for the Argo, or what she would have sold for at forced sale, but what was her value in open market? The law on this subject has been stated in collision cases as follows: In the case of the Colorado, 1 Brown's Ad. Rept's, the court said:

"The vessel being a total loss, the value just before the collision is the measure of damages. The difficulty is to ascertain that value. The criterion is, what would she have brought in the market, not under the hammer at forced sale, but in the ordinary course of sales of such property? (Londes on Collision, 141 to 146; 1 Parsons on Shipping and Ad., 452.)"

In "The Atlas," 93 U. S., 310, the United States Supreme Court said:

"Satisfaction to the libellant for the injury sustained is the true rule of damages in a cause of collision, by which is meant that the measure of compensation shall be equal to the amount of injury received, and that the same shall be calculated for the actual loss occasioned by the collision, upon the principle that the sufferer is entitled to complete indemnification for his loss, without any deduction for new materials used in making repairs, as is prescribed in the law of marine insurance. Complete recompense for the injury is required."

The appearance, character, style and condition of the Argo are fully disclosed by her picture, her papers, and the evidence of the witnesses to be found in the record, from which it well appears she was slightly over 95 feet long, 15 feet beam, with 6 feet of hold, and when built in 1878 was called the Leila, with name afterwards changed to that of the Argo; and that, though built in 1878, she was subsequently rebuilt, received a new boiler, which as late as January, 1897, stood a hydrostatic pressure of 186 pounds and was allowed a working steam pressure of 124 pounds to the square inch, and in 1893 received a new hull, deck and other matters at a cost of $10,000 (Babcock, p. 140), making her in all respect a better boat than she was when originally built, and at the time of her loss, "from keelson to truck" was in first-class condition, and her outfit, furnishings, etc., were of the very finest, while her speed when pushed was 21 miles an hour.

What was the market value of such a craft, in such a condition and of such speed? What would be "complete compensation for the injury which the libellant has

sustained in her total loss? Certainly nothing less than $20,000, with interest from the date of said loss, and in no event not less than $15,000, for which one-half was sold, for which the money was to have been paid the day after her loss, had she not been lost by the sole fault of the claimant.

And first we will refer to the evidence of the claimant on this subject.

Captain Woodward was the first witness examined, and while it is true he says he made an examination of the Argo with the view of ascertaining her value, it is apparent from his evidence that such examination must have been quite superficial, for he says she was a high-pressure boat, and that to go to sea she would have to have the addition of a condenser (p. 287), whereas her official papers show she had a compound condensing engine (p. 175), and Orkney, her engineer, says she had a compound keel condenser (p. 68). And, strange as it may appear, Captain Woodward further said speed of 21 miles an hour would not be an element of her value (p. 287), while to a yachtman speed is the principal element of value and the great item in the cost of construction.

With such an imperfect knowledge of the vessel, Captain Woodward says he thought she might have sold for $8,500 (not that this was her value), and that he would not have offered more; but says frankly that that amount does not fix the value of the boat, but that he would not have offered more (p. 280) (evidently with a view of buying her and again selling at a profit); but when his attention was called to the fact that she had been sold for $15,000, to be delivered the day following that on which she was lost, he says that sum would fix her value (p. 281).

The evidence of the Hereshofis (p. 306), the original builders of the Leila (which was afterwards called the Argo), has also been taken, and it declares the original cost of the Lelia was $18,000, and to duplicate her would cost $20,000, and that if she had been kept in good repair one-third of the last amount should be deducted,

which would fix her value at their place in Bristol, R. I. (but not in New Orleans, and it would cost a large amount to bring her here) at $13,334. But the building of a new hull, strapped and braced with iron braces and supports beyond what she was when built, with a new deck, made her, in fact, a new boat, and as the witnesses who were conversant with this construction say, made her a better boat than when she was new.

The evidence on the subject of value is as follows:

W. I. Babcock, manager of the Chicago Ship Building Co., and of large experience in the building and repairing of vessels, says she was worth $17,500 (p. 140).

David M. Cochrane, a steamboat man of large experience, who carefully examined the Argo in Chicago in 1895, in the fall, places her value at the time of her loss at $18,000 to $20,000 (p. 143), and says that to duplicate her anew would cost from $26,000 to $30,000. Not to duplicate her as she was when originally built, but as she was in 1895, when, owing to having received a new hull and other things, she was a "better boat than when built."

Frank Huettman, of Detroit, who was the builder of yacht engines and machinery for steam yachts, and who had done all the work on her while she was in Detroit, and who was on her in Galveston, Texas, in 1896, for 10 days and took apart her machinery, put in a new truss bearing and did other work on her, and thereafter replaced all her machinery and made three or four trips on her, finding her in first-class condition, says that on January 28, 1897, her market value would be from $25,000 to $30,000 (p. 122).

Timothy E. Tarsney, of Detroit, an attorney at law and a proctor in admiralty, but prior thereto for seven years a practical marine engineer on the western lakes, on January 28, 1897, puts her value at $18,000 (p. 125), and on cross-examination said:

"I base my opinion as to the value of the Argo when she was lost in January, 1897, upon my knowledge of the construction and equipment of steam vessels, a practical experience as a marine engineer for seven

years, a practical experience in machine shops and in the operation of stationary engines, and my experience as proctor in admiralty, and knowledge generally acquired from persons familiar with steam vessels, and more particularly from personal observation and inspection of the yacht Argo, as stated in my answer to the third direct interrogatory; and about three weeks ago a client of mine sold her steam yacht "Azalia" for a consideration of $18,000. I was consulted concerning the sale. In my judgment the value of the Argo exceed that of the Azalia (p. 127)."

William Howie Muir, of Detroit, a manufacturer, has had no experience in buying, selling or building yachts, was acquainted with the Argo when she was called the Leila, and before she was rebuilt at Chicago at a cost of over $6,000 (p. 146), and knows she was sold for $9,000 or $7,000 to the Chicago people at a sacrifice because the parties who held her had no use for her; but he never saw her thereafter and can put no value on her at the time she was lost (p. 128).

Safford S. Delano, of Detroit, treasurer of a car company, has had no experience in buying, selling or building yachts, but knows the Leila was bought in 1884 for $10,644.03, and was sold in 1892 for $7,000—a price far less than her value—because the concern which owned her was going out of business and was willing to sell her at a great sacrifice rather than be bothered with her; but these sales were all made prior to the rebuilding of the Argo at an expense of $10,000 (p. 140), after which the witness says he is incompetent to put any value on her at the time she was lost (p. 131).

Thomas E. Miller, president of Miller Bros.' Dry Dock Company, Chicago, Ill., helped to rebuild the Argo in 1893. The company's bill for carpenter work alone was $5,746.32 He did not remember what the "other work cost," done at that time and consisting of "a great deal of machinery, boiler and blacksmith work was done at same time. Plates were put under the decking to strengthen her sides, and other work was done." (Record, pp. 145-6.) But Mr. Babcock says

Miller Bros.' bill was about $10,000, and by this he means, undoubtedly, the total cost of rebuilding which was done at Miller Bros.' dry dock, for he O. K.'d the bills (Record, p. 142). Mr. Miller places the value of the Argo at $20,000 to $25,000 (Record, p. 146).

Edward H. Gillman, of Detroit (p. 135) has had much experience in buying and selling steam yachts and steam vessels, and knew the Leila before she was sold to the Chicago people, and when she was running from Detroit to Grosse Pointe, for whom he made a careful examination of her at the time of their purchase, when said Chicago people paid $7,000 or $9,000 for her, and at which time he says she was positively worth from $12,000 to $15,000. This, of course, was before she had been rebuilt by said Chicago people at the above expense of $10,000, after which this witness never saw her, and hence can put no estimate on her value at the time of her loss; but says if she was in as good condition—and she was in far better condition after receiving a new hull, deck, and other repairs—as she was when she was sold as the Leila to Chicago, she was worth from $12,000 to $15,000, and that a vessel of her class could not be built for less than from $30,000 to $35,000.

Captain A. Thomas, of New Orleans (p. 188), who is familiar with boats, who has been a dry dock man, a pilot and captain, and who has built boats and owned vessels, carefully examined the Argo a few days before she was lost, and found her in first class condition in every respect, and considered her worth from $25,000 to $30,000.

In addition to all of the above, the evidence of Bagley (pp. 185-6) and Springer (p. 184) shows that the latter had concluded a sale of one-half of the Argo to the former for $7,500, and that she was to have been delivered and the money paid for said one-half interest on the day following that on which she was lost and on her return to the city. This was an actual sale in this market, and under the law as declared in "The Atlas," 93 U. S., 310, the libellant is at least entitled to compensation at least this amount.

See also Springer's evidence (p. 181).

Some evidence has been offered to show libellant at one time before she was lost offered to sell her for $12,000 and allow a commission, but the same evidence (Gen. Miller) shows it was because the libellant had become tired of a yacht and wanted to get rid of her badly, and his own evidence shows it was because he was in need of money, and wanted to avoid the expense of taking her back to Detroit (p. 237). But this is not legal evidence.

From all the evidence we think it will appear that the value of the Argo at the time of her loss was not less than $20,000, for which the libellant should have judgment, with costs.

When we take the various amounts given by each of the witnesses examined and add them together and divide the sum by the number of witnesses examined, the result will show how entirely wrong is the amount awarded by the court. This will appear as follows:

Woodward, - - - - - - - - -	$ 8,500
J. B. Herreshoff, cost, $20,000; depreciation, from one-third to one half, say, - -	11,667
N. G. Herreshoff, cost, $20,000; depreciation, one-third, - - - - - - - -	13,334
Bakcock, - - - - - - - - -	17,500
Cochrane, from $18,000 to $20,000, say, -	19,000
Huettman, from $25,000 to $30,000, say, -	27,500
Tarsney, - - - - - - - - -	18,000
Miller, Thos. E., from $20,000 to $25,000, say,	22,500
Muir gives no valuation, but says the Leila was sold (this before receiving a new hull, deck, etc) from $9,000 to $7,000, say, -	8,000
Delano gives no valuation, but says she was sold for less than her value because of no longer use (this before receiving new hull, etc.) for $7,000. - - - - - -	7,000
Cillman examined her as to value before receiving new hull, etc., when sold to Chicago in 1892, and valued her at $12,000 to $15,000 in 1897, - - - - -	13,500

Thomas examined just before her loss and valued her from $25,000 to $30,000, say,	27,500
Miller says libellant offered to sell her for, -	12,000
Springer valued her at, - - - - -	20,000
Bagly closed bargain for half at $7,500, making,	15,000
Total valuation, - - - - -	$241,001

And this sum divided by the total number of witnesses examined (15) gives a valuation of $16,066.73⅓

But if we deduct the amounts given by Muir and Delano, who were not experts in such matters ($8,000 and $7,000, or $15 000) from the above $241,001, we get valuation of $226,001, and this divided by the number of the other 13 witnesses gives $17,384.

In view of the foregoing we assert with confidence that under no system of calculation or reasoning can the amount of $15,000, without interest awarded by the Court of Appeals be sustained as the valuation of the Argo when destroyed by the Dumois on January 28, 1897. No interest was added by that court. Certainly libellant is entitled to interest on his loss from the date of it.

And surely not when the uncontradicted evidence shows one-half of the vessel was actually sold, to be delivered the day after that on which she was lost, at a valuation of $15,000, and in the market where she at the time was, while the best evidence in the case conclusively shows her value at said time was fully $20,000, nothing less would be compensation for her wanton destruction by the Dumois and the loss sustained by the libellant—that compensation which the Supreme Court, in "The Atlas," 93 U. S., p. 310, declared one thus injured was entitled to recover.

Evidently the learned court, in assessing the damages, did not apply the correct rule for finding the value of a vessel lost in a collision, when the vessel is a total loss. The question is, what was the value of the Argo just before the collision? This question cannot be answered by taking the original cost of the Leila and deducting for depreciation occasioned by use and age.

First—Because the Leila, we have shown, when rebuilt and called the Argo, was a better boat than when first built.

Second—Because such method of finding value is applicable only when the vessel lost has been constructed for a special purpose not in the line of ordinary shipping, or when there is no other evidence of value offered to guide the court.

There was nothing peculiar about the construction of the Argo and she was useful for many purposes, as her license and the evidence of Mr. Bagley and Mr. Thomas shows.

It will be admitted that the value of the Argo should be found from the best evidence of that value, and not from the "next best" or the poorest evidence of her value. The best evidence of the value, according to the rule in the Colorado case above quoted, is found in the depositions of T. E. Tarsney, Thos. M. Miller, W. I. Babcock, David M. Cochrane, Frank Huetteman, N. R. Bagley and Capt. A. Thomas. All of these witnesses knew the Argo, testified she was in first-class condition, and gave evidence of her value. Mr. Thomas and Mr. Bagley saw and examined the vessel a few days before or "just before the collision," and they placed her value at $25,000 to $35,000. (Record, pp. 185, 189)

"The correct rule upon this subject when the vessel is a total loss seems to be that the market value of the vessel just before the collision is the proper measure of damages; that the best evidence of such value is the opinion of competent persons who knew the vessel shortly before she was lost, and the next best evidence is the opinion of persons conversant with shipping and the transfer of vessels."

The Colorado 1 Browns Adm. p. 413.

If this rule is applied, as it should be, to the case at bar, the evidence of J. B. and N. G. Herreshoff will be found incompetent and hence should not be received as establishing the value of the Argo. The same thing

may be said of all the evidence introduced for the claimant on the measure of damages.

Therefore petitioner prays that a writ of certiorari be duly granted to bring up the record herein from the Circuit Court of Appeals for the Fifth Circuit and that thereafter the cause be heard in this Honorable Court, and that after due proceedings had judgment be rendered in favor of petitioner for the full value of said Argo, with interest from the date of her loss and all costs of suit, and for such other and further relief and redress as to right and justice appertain and as the court is competent to give in the premises.

Respectfully submitted,

RICHARD DE GRAY,

Proctor for Petitioner.

MAR 11 1899
JAMES H. McKENNEY,
Clerk

No. 413

Brief of De Gray for Petitioner

SUPREME COURT

OF THE UNITED STATES.

Filed Mar. 11, 1899.

OCTOBER TERM 1898.

No. 413.

OSCAR M. SPRINGER,
Libellant and Petitioner.

vs.

STEAMSHIP ALBERT DUMOIS;
ANDERS JAKOBSEN,
Claimant.

On writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR LIBELLANT AND PETITIONER.

RICHARD DEGRAY,
Proctor for Libellant and Petitioner.

DETROIT:
CHAS. M. ROUSSEAU & SONS, PRINTERS, 40-44 WEST LARNED STREET.
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BRIEF FOR LIBELLANT AND PETITIONER.

STATEMENT.

The steam yacht Argo, of which said Oscar M. Springer of Detroit, Michigan, was the sole owner, lies sunk on the bottom of the Mississippi river, about 500

feet from its western bank (R. pp. 110-114), at a point about 80 miles below the City of New Orleans (R. p. 26), and is a total loss. The river at this place is straight, is 2,400 feet wide, and has deep water from bank to bank. (Chart of Mississippi river Commission.)

This sinking and loss was the result of a collision which occurred on a clear, starlight night, between the hours of 12 o'clock p. m. of January 27th, 1897, and 1 o'clock a. m of January 28th, 1897, between said steam yacht Argo, bound on a trip from the City of New Orleans to the jetties at the mouth of the South Pass of said river, and said steamship Albert Dumois, which was proceeding to the City of New Orleans. With the sinking of said Argo occurred the death of the late Faure Bourgenois de Blesine and the late Harrison P. Hester.

On the 28th day of January, 1897, libel was filed by said Springer in the United States District Court for the Eastern District of Louisiana, in rem, against said steamship (R.p. 1), claiming said collision was solely caused through the fault of said Dumois and claiming damages to the extent of $40,000, and an intervening libel was filed by the crew of said Argo, respectively, claiming damages for the loss of their respective effects lost in said sinking (R. p 5); and thereupon said Anders Jakobsen appeared and claimed the said Albert Dumois as sole owner thereof (R. p. 8). And thereafter Marie B. Bourgenois de Blesine, the mother of said Faure de Blesine (as the party duly authorized under the jurisprudence of Louisiana to bring such suit), filed a libel in personam against said Anders Jakobsen, claiming the loss of her son was solely caused through the fault of said Dumois, and damages to the extent of $20,000 (R. p. 12).

Thereafter said Jakobsen filed his petition claiming the benefit of the limited liability provided for in the Act of Congress of March 3rd, 1851, and in Section 4263 of the Revised Statutes of the United States (R. p. 9), under which the Dumois and her pending freight were appraised (R. p. 12), the vessel released on bond (R. p. 17), and further proceedings against said vessel, freight, and her owner were enjoined (R p. 11); and thereafter monition was published directing all persons claiming damages to appear before a Commissioner duly named and make proof thereof, and enjoining proceedings against said steamship and her owner (R. p. 20); and thereafter, by agreement of proctors, said libel in personam of said Mrs. de Blesine was filed and treated in said limited liability proceedings as an answer to said proceedings (R. p. 16). And at a still later date Mrs. Genevieve Keplinger Hester, as widow of said Harrison P. Hester, filed claim under said monition, alleging his death was solely caused through fault of said Dumois, and claiming damages at $20,000 (R. p. 30).

At a still later date claimant of the Dumois filed an amended petition in more amplified form, giving the facts of the case case as claimed by him, and again praying the benefit of said limited liability laws (R. p. 25), to which as well as to said original petition Springer filed an extended answer, stating the facts as claimed by him, and among other things in said answer, surrendered the wreck of said Argo and claim for charter money for the trip or voyage on which she was lost, and prayed for the recovery of the value of said Argo as in his libel set forth (R. p. 36), the substance of which amended petition and the answer thereto and to said original petition are as follows :

Said amended petition stated in substance: (1) That said Dumois, while proceeding on a trip from Port Limon, Costa Rica to New Orleans, came in collision with the Argo. (2) That said Dumois was properly manned and equipped, etc. (3) That at the time of said collision said Dumois had arrived at a point 80 miles below New Orleans and was proceeding as close to the east bank as it was safe to go, when her lookout, pilot and second mate discovered the lights of a steamer coming down said river close to said eastern shore, "head and head" and a little to the starboard, when the Dumois's lights were burning brightly, and that on discovering said lights—which were those of the Argo—and before any signal had been given by her, said Dumois gave two distinct blasts of her whistle, indicating that she desired to pass the Argo to her left, starboard to starboard, and put her wheel to starboard; that the Argo wrongfully crossed said signal with one blast of her whistle, and then said Dumois immediately repeated her signal and immediately thereafter caused three or more short blasts to be blown to indicate danger, and stopped and backed, but that said "Argo wholly neglected to stop her engines and back, but kept her course and speed until her pilot saw the green or starboard light of the steamship, when he attempted to pass ahead of her by putting his wheel hard aport, which brought the Argo in collision with the steamship, striking her at right angles on her starboard side about 10 feet abaft the stem, from which collision the Argo sank in a few minutes and became a total loss." (4) That the Argo carried no masthead light, but that all her lights were on the pilot house, the colored on the respective

sides and the white light on the forward end of the pilot house, all at the same height and so few feet above the water, which gave them the appearance of being at a greater distance off than they actually were, "tending to mislead (not that they did mislead) an approaching vessel." (5) That owing to the above location of the lights they were not visible until she cleared the tug Day Dream and her tow of luggers coming to a landing on the west bank half a mile above the steamship, which compelled her at the time of the first signal to pull from the bank to clear them, as she could not safely go between them and the bank or go closer to the bank, which the pilot of the Argo must have known, as he had just passed the tug and luggers. (6) That the Argo was on the east side of the river, out of her proper course for descending vessels, which was in the middle of the river, and was running at the dangerous speed of 18 or 20 miles an hour, and that her sudden appearance after the clearing of the tug and luggers at a distance of less than half a mile put the steamship in such extreme peril that her pilot was compelled to take instant action to avoid the collision, but the pilot of the Argo made no effort to avoid it by stopping the Argo's engines and backing her or by keeping her course or putting his wheel to starboard: (7) That the Argo was not sufficiently officered and manned, the only deck officer being Brown, who acted as master, pilot, mate, wheelman and lookout, and that, owing to the multiplicity of his duties he did not give proper attention to the navigation of his vessel. (8) That lacking two men to complete the crew for this trip to the jetties, the master took Hester and Blesine, who were not seamen; that said Hester took the manage-

ment and had charge of the Argo for the New Orleans Picayune, which had chartered her for the voyage, and as such had the right to give all orders, both of whom were drowned. (9) That the said collision was in no way caused by the fault of said steamship and was caused by the fault of the owner of the Argo and said Hester in not properly manning her, and by those charged with her navigation. (10) That though said collision occurred without fault, privity or knowledge of said petitioner, Springer, as owner of said Argo, has libeled the Dumois, claiming $40,000 damages, and the mother of said Blesine has filed a libel in personam claiming $20,000 on account of his death, and the wife of said Hester threatens to file libel claiming damages for his loss of life, and the crew of said Argo have intervened and claimed various small amounts (which are mentioned), and petitioner fears other claims will be made. (11) That under the circumstances petitioner desires to obtain the benefit of Sections 4283, 4284 and 4285 of the United States Revised Statutes and amendments thereof and supplement thereto, and to contest his liability and that of said steamship to any loss or damages resulting from said collision. (12) That for the purpose of obtaining the benefit of the above limited liability law offers stipulation for the value of said steamship and her pending freight for the benefit of those who had sued and those who may hereafter sue, etc. And affirming the prayer of his original petition, and that he may have the benefit of all proceedings theretofore had, further prayed that the Court decree said steamship was not in fault in causing said collision, and that all claims asserted or brought against him and said steamship may be rejected with costs; but in case

it should be decided both vessels were in fault, that the damages done said Dumois be allowed as an offset against any sum allowed in favor of libellant to the extent claimed in his answer to the libel filed herein, and that in case full damages should be awarded against said steamship in favor of the intervening libellants and the legal representatives of said Flesine and said Hester, that then the said Oscar M. Springer may be decreed liable for one-half of all such damages, and that any judgment he might recover against petitioner and his said steamship may be decreed to be compensated and extinguished to that extent, and for general relief.

To the original and the foregoing amended petition the libellant Springer, in substance, responded as follows: (1) Admitted said collision did occur in the river at the place stated, to-wit: about 80 miles below the City of New Orleans. (2) Denied said steamship Dumois was properly manned and equipped, and averred her officers and crew were unskillful and negligent. (3) Admitted that prior to the said collision said Dumois was coming up the Mississippi river, but about 450 or 500 feet from its eastern bank, at 10 miles an hour; and denied that her lookout, or mate, or anyone else, discovered the lights of the Argo close to the east bank of said river, or to the starboard of said Dumois; denied that said Dumois had a proper lookout forward, that there was a competent pilot and mate on the bridge keeping a vigilant lookout; denied that before any signal was given by said Argo two distinct blasts of said Dumois's whistle were given; denied that said Argo wrongfully crossed the signals of said Dumois, or crossed her signals at all, and averred that said Argo was going

down said river at the point stated in her proper place in the middle of the river, and when she had reached a point three-quarters of a mile distant her master and pilot (who was steering), and her lookout on watch, noticed the red and white lights of a steamer ascending said river in the proper place for such ascending vessel, and when she had approached within about half a mile of the Argo, still in the middle of the river, and before said Dumois had given any signal whatever, said Argo gave one distinct blast of her whistle, indicating she would keep her course and pass on said Dumois's left, when, not heeding said Argo's signal, said Dumois crossed the same with two blasts of her whistle, crossed the stream and the course of said Argo, shut out her red and showed her green light; that immediately upon said Argo's signal being crossed, said Argo again blew one blast of her whistle and put her helm hard aport to go wide clear of said Dumois, as in the judgment of her master and pilot it was best for all for her to do, but said Dumois continued and blew her danger signals, but only a second or two before the Argo struck her on her starboard bow, and thereafter said Dumois continued her course up the river for half a mile or more before she stopped, going rapidly past the Argo, which sank in four minutes, becoming a total loss and causing the death of Hester and Blesine, but no damages were done to said Dumois. (4) Admits said Argo carried no masthead light, and that her lights were on the pilot house, but denied they were on the same plane and that they were only a few feet above the water, and that they were misleading, and averred they were in all things the proper lights for a vessel of the Argo's class and placed accord-

ing to law, and were burning brightly. (5) Denied the lights of the Argo were not visible until she had cleared the tug Day Dream and luggers landed on the east bank of the river half-a-mile above said Dumois; denied said Dumois was compelled to pull out from said eastern shore to clear said luggers, and averred that if said Argo's lights were not seen it was the fault of the pilot of said Dumois; that there was fully 300 feet between the course of said Dumois and said luggers, which were landed at the eastern shore, and that at the time the course of the Argo was to the westward of that of said Dumois and in the middle of the river, and had said steamship not wrongfully left said eastern shore and crossed the Argo's course no collision would have been possible. (6) Denied the Argo was on the eastern side of the river and out of her course in the middle of the river, and that her speed of 18 miles an hour was dangerous or excessive; denied that her appearance was sudden and that she could not plainly and distinctly have been seen on that clear, starlight night a distance of less than half-a-mile; denied that said Dumois was at any time put in extreme peril by any action or fault of the Argo, and that her pilot was compelled to take instant action to avoid collision, and averred through want of skill the pilot of the Dumois took just the action to bring about the collision that did occur, by refusing to heed the two separate signals of one blast of said Argo's whistle, and crossing her signals and course, as already described; all of which was sudden, wrong and unanticipated, and put the Argo in extreme peril, and the judgment of her master and pilot in this situation was that the very best thing he could do, owing to the speed with which he was

going with the current, and owing to the fact that the Argo could not be stopped and backed in less than 10 minutes, was to put his helm hard aport, proceed with full speed and pass in front of said Dumois, and this would have been successful had said Dumois, after wrongfully crossing the signals and course of the Argo, stopped when she blew her danger signals; that at the time the lights of the Argo were burning brightly and were visible more than two miles, and if not seen at less than half-a-mile, as alleged, it was solely due to the insufficient lookout. (7) Denied that said Argo was not sufficiently manned; denied she did not have a skillful and competent lookout on duty; denied that there were any duties that rendered Brown (the Argo's master and pilot) incompetent to give, and that he did not give proper attention to the direction and steering of said Argo; and averred said Argo was not a large, ocean-going steamer, but a small pleasure yacht, 100 feet long and of 48 gross and 24 net tons burden, and only licensed to navigate lakes, harbors, sounds and rivers, and was engaged only on a short trip from New Orleans to the jetties and return, and said Brown was entirely competent to give and did in all things give proper attention to her navigation, and averred the full crew of said Argo was a master and pilot, one engineer and five crew, as her certificate of inspection will show, all of whom were on board of said yacht at the time, the said Hester and said Blesine acting as deckhands, for which they were competent. (8) Admitted said Hester and Blesine agreed to go and act as deckhands, for which they were competent; admitted said Hester had charge of the trip for the charterer with direction of said Argo, and that

said Hester and said Blesine lost their lives. (9) Denied the collision was in no way caused by the fault of said Dumois, and averred it was solely caused by her fault, and that she alone was responsible therefor and for the loss of said Argo and said Hester and Blesine. (10) Denied the collision happened and said loss and damage occurred without fault of the Dumois, and admitted the owner of the Argo had libeled the Dumois for $40,000 for her total loss, that Mrs. Blesine had filed libel in personam against the owner of the Dumois claiming $20,000 damages for the loss of her son, and that the other parties named had filed intervention claiming the amounts stated, for loss of personal effects. (11) Denied that said Dumois was entitled to the benefit of the limited liability provisions of the Revised Statutes of the United States. (12) Admitted the filing of said petition claiming the benefits of said provisions of said limited liability, and that said claimant had given bond for the value of said steamship and pending freight, and that she had been released.

And further answering said, that in case the Court should find said Argo was in any manner in fault in causing said collision, then he said that at the time thereof said Argo was under charter to The New Orleans Picayune Newspaper Co. to make a trip from the City of New Orleans to the jetties at the mouth of the Mississippi river and return for the price of $100, and was at the time under the management of said Hester, who was on board of her as said company's representative, no part of which had been paid, as said trip was broken up by said collision before the same was half completed, and that by said collision said Argo was sunk and com-

pletely lost; that there is no personal liability against respondent for any loss or damage to the Dumois, if any occurred (which is denied), nor to Mrs. de Blesine for the loss of her son, nor to said Mrs. Hester for the loss of her husband, nor to the other parties, nor was there any liability on the part of the Argo to said parties, or either of them, beyond the value of said Argo as she lies sunk at the bottom of the Mississippi river at said point of collision; and in and by said answer surrendered her as she lay sunk as aforesaid, and any claim he might have for said charter money, for the benefit of all parties who may in any manner have any claim against him or the said yacht Argo, and prayed for damages as in his original libel set forth.

After the evidence was fully taken and the case was being heard, Springer again made surrender of the wreck of the Argo and said claim for charter money for said voyage or trip on which she was lost (R. pp. 42 and 43), following the practice observed in 'The Great Western, 118 U. S., p. 524."

After due consideration by the court its conclusion was announced in an oral opinion delivered in presence of the proctors of all parties, which was to the effect that when the vessels first came in sight of each other the Argo was descending the river in the usual and proper course for a descending steamer, in the middle of the river, and the Dumois was ascending said river toward the eastern bank thereof and about 400 or 500 feet distant therefrom; that the Argo gave the first signal of one blast of her whistle to pass to the right of said Dumois —which was proper—and said Dumois wrongfully crossed signal with two blasts of her whistle, starboarded

her helm without any reason for a departure from the "rule of the road" (Rev. Stat. U. S., Sec. 4233), and crossed the course of said Argo, notwithstanding said Argo again gave a signal blast of her whistle, still claiming her right to pass to starboard, and ported her helm to go to the westward, when said Dumois replied with her danger signal, continuing her course in front of said Argo, causing the latter to strike her on her starboard bow, from which the Argo sank in a few minutes, and said Hester and said Blesine to be drowned, and thereafter said Dumois continued her course up the river until she disappeared from sight, and decreed said collision was solely caused by the fault of the Dumois, and awarded to libellant Springer $11,000 for the loss of said Argo, $5,000 to Mrs Hester, $2,500 to Mrs. Blesine, and to the crew of the Argo the respective sums by them claimed (R. p. 309).

From this decree claimant of the Dumois appealed to the United States Circuit Court of Appeals for the Fifth Circuit, assigning in substance, as error, that said collision was caused through the sole fault of the Argo, and that the amount awarded as her value was excessive (R. pp. 310 to 313).

An appeal was also taken by Springer, claiming the amount awarded him as the value of the Argo was too small (R. pp. 316 to 319), but no appeal was taken by Mrs. Hester or Mrs. Blesine, nor by the crew of the Argo, who were awarded the amounts claimed.

The United States Circuit Court of Appeals in part sustained both appeals, decreeing the damages sustained by Springer in his loss of the Argo were $15,000, and

those sustained by the Dumois were $185, and that the collision was caused by the mutual fault of both vessels, and that said damages should be divided, and adjudged that Mrs. Hester recover from the principal and surety on the release bond $3,000 as widow and $2,000 as tutrix to her minor child; that Mrs. Blesine recover from said parties $2,500, the crew of said Argo one-half of the damages by them respectively sustained, and that O. M. Springer, owner of the steamship Argo, do have and recover of said Anders Jakobsen, claimant, and Isadore Newman, surety, in solido, the sum of $7,500, subject to a credit of $92.50 in favor of said Anders Jakobsen and Isadore Newman for one-half of the damages sustained by the Dumois, and to a credit of one-half the amounts hereinbefore decreed in favor of Mrs. Hester and Mrs. Blesine, all of which credits aggregate the sum of $3,842.50 leaving a balance due on this decree in favor of said O. M. Springer, claimant, of the sum of $3.657.50, and that said Springer have execution only for said sum of $3,657.50" (R. pp. 323 and 324).

ASSIGNMENT OF ERRORS.

Of the foregoing decree, said Springer complains and makes the following assignment of errors:

1. Because it holds the Argo was mutually in fault in causing said collision, whereas said Argo was at the time desending the river in her proper place in the middle thereof and said Dumois was ascending said river to the left or port of said Argo, when said Argo gave one blast of her whistle indicating that she would pass on the left hand side of said Dumois, to which the latter responded with two blasts of her whistle, whereupon said Argo responded with one blast of her whistle and immediately ported her helm to go to her right, while said Dumois disregarded said whistle and wrongfully crossed the bow and course of said Argo and thereby caused said collision.

2. Because said decree did not find the value of said Argo to be at least $20,000, and because it did not allow interest from the date of the loss, or any interest from the date of the decree.

3. Because it directs that claimant of said steamship Dumois is entitled to deduct one-half of what he is adjudged to pay Mrs. Hester and Mrs. Blesine from the half damages first decreed to libellant as half the value of the Argo, and this in the face of the fact that petitioner made surrender of the Argo's wreck and claim for freight in his answer to the aforesaid amended petition (as was

done in the case of the Scotland, 105 U. S., p. 24), and again formally surrendered her with all sums due her on the trip on which she was lost, for the benefit of all parties in interest.

4. Because said decree does not increase the value of said Argo to at least $20,000

5. In case the above should be found untenable, then petitioner says there was nothing for said Court of Appeals to base its decree upon, as there were no facts found by the District Court.

The foregoing was substantially set forth in the petition filed herein for the writ of *certiorari* and was supported by the argument which follows; and said writ having been granted on October 17th, 1898, said argument is now here repeated and a reversal of the decree of said United States Circuit Court of Appeals, and decree in favor of libellant is asked for the full value of said Argo ($20,000), with interest from the date of her loss on January 28th, 1897, on the grounds in said argument set forth.

And here we think it proper to observe that of the foregoing decree of the United States Circuit Court of Appeals, no complaint was made by claimant by petition filed for a like writ, nor by brief filed in opposition to petitioner's application for said writ, and hence we take it, that inasmuch as under the 6th section of the Act of March 3, 1891, in all cases certified to this Honorable Court by its direction, its power and authority is the same as if they had been carried to said court by appeal or writ of error, that no complaint can now be made or error assigned by claimant of said Dumois as to the

decree of said United States Circuit Court of Appeals.

In fact this has been directly held in Hubbard vs. Todd, 171 U. S., p. 474, where the court, at page 494, said:

"This case belongs to the class of cases in which the decree of the Circuit Court of Appeals is made final by the statute, and having been brought up by certiorari on the application of petitioner below, is pending before us as if on appeal. As respondents did not apply for certiorari, we shall confine our consideration of the case to the examination of errors assigned by petitioner."

And after having considered the case the court closes its opinion, at page 505, as follows:

"Whether or not there was error in the decree of which respondent might have complained, we do not feel at liberty to decide."

ARGUMENT.

The issues in this case are both of fact and law, and in discussing them we will first ask attention to a consideration of the law of the case and then of the matters of fact.

Argument as to matters of law.

Tthird assignment of error.

Conceding for the sake of argument that both vessels were in fault in causing the collision (which of course we deny) both having been surrendered under the limited liability provisions of the Revised Statutes of the United States, can the principal and surety on the bond, given for the release of the Dumois and her pending freight, correctly, be permitted to deduct half the amounts they are decreed to pay Mrs. Hester and Mrs. Blesine from the amount decreed as half the damages sustained by Springer, owner of the Argo?

It is too well settled to require the citation of authority, that in a case of collision of vessels, and a proper surrender of the property in fault, the personal liability of the owner is confined to the property surrendered at the *end* of the voyage, and any recovery that may be had, to what ever may be realized from said property so surrendered.

The law in this country and in England on this subject is entirely different. There the owners liability is confined to the value of the property just before the disaster, here it is confined to the value of the property after the disaster. In the case of the Benefactor, 103 U. S., page 246, the court said:

"In England, the value of the vessel immediately before the collision was regarded as the true criterion of liability. But the English law is different from ours. It makes the owners liable to the extent of the value of the ship at the time of the injury even though the ship itself be lost or destroyed at the time; whereas our law follows the admiralty rule, limits the liability to the value of the ship and freight after injury occurred; so that if the ship is destroyed the liability is gone; and whether damaged or not damaged, the owners may surrender her in discharge of their liability."

In The City of Norwich 118 U. S. p. 490, the court said:

"We held in Norwich vs. Wright, and we have held and decided in many cases since, that the Act of Congress adopted the rule of the admiralty law as distinguished from that of the English law on this subject; that the value of the vessel and freight after, and not before the collision is to be taken."

And in the case of The City of Norwich 118 U. S., p. 468, and in The Great Western 118 U. S., p. 520, it was decided the owner, claiming the benefit of the limited liability law, need not surrender a policy of insurance upon the vessel surrendered, or moneys collected thereon; that the same did not enure to the benefit of parties who may have suffered by the disaster. And the reason is most apparent, 'viz., because the owner's liability is confined to the value of the wreck, after, and not before the collision, and as it lay sunk at the bottom of the sea or river. In the language of the court in said City of Norwich 118 U. S., p. 492:

"The proper value of the steamer was taken in the court below, namely, the value which she had when she

had sunk, and was lying on the bottom of the sea. This was the termination of the voyage."

Hence, if the vessel is a total loss and nothing is recovered from the wreck, there can be no recovery by those who have suffered by the disaster.

The application of this law to this case is this. There is no personal liability on the part of Springer, because he has surrendered the wreck of the Argo and all claim for freight; and there can be no recovery therefrom, because there was no freight due, and the vessel was a total loss from which nothing can be recovered. There is no personal liability on the part of Jakobsen, the owner of the Dumois, because he has surrendered her and her pending freight and given bond for the appraised value thereof, to-wit: $31,333.73, and costs, making a total of $32,500 (R. p. 18), and this is the only liability in the case. How then could the Court of Appeals, rightfully, decree that the Dumois, being condemned to pay full damages to Mrs. Hester and Mrs. Blesine from the above bond, decree that the principal and surety on said bond could deduct one-half of what they were condemned to pay said Mrs. Hester and Mrs. Blesine, from the amount they owed Springer? Certain it is, that Mrs. Hester and Mrs. Blesine could not recover the whole, or half, or any part of the damages they might have suffered, from Springer (even though the Argo might have been in fault), because he has surrendered the wreck and claim for freight, and because he was not obliged to surrender his suit for damages to secure the benefit of the limited liability provided by law, and for the reason that his suit for damages is a claim for the value of the Argo as she existed before the collision, and

not after she was sunk on the bottom of the river. Nor could Mrs. Hester or Mrs. Blesine recover anything from the wreck of the Argo, because it has no value. In fact there can be no recovery in this case by anyone, except from the bond given for the surrender of the Dumois. Yet under the decision of the lower court, Springer's property (one-half the value of the Argo, less half the damages sustained by the Dumois in the collision, and no part of which—as above stated—he was obliged to surrender, is taken from him to pay part of a debt which he does not owe because of said surrender, and which said bondsmen do owe. In other words, the damages sustained by the Dumois in this collision was $185.00, and if she and said Argo were both in fault, one-half of this amount is all the Argo (Springer) would owe the Dumois (Jakobsen), and the balance of the half of the damages sustained by the Argo are the property of her owner, Springer, half of which the decree wrongfully takes from him and hands over to the Dumois bondsmen to reimburse them in part, a debt which the Dumois alone owes.

It is true it was decided in the case of the North Star 106 U. S., p. 17, a case of collision where both vessels were in fault, and one was lost and her wreck was surrendered, that the owner of the lost vessel could only recover one-half of his damages, and the evident reason was, that, both being in fault the surviving vessel only owed half the damages. But that was a case solely between owners of colliding vessels, both in fault, and it has never been decided that the owner of one vessel can take from the owner of the other vessel one half of what the former has to pay to a third, innocent person, and

we apprehend it will never be so decided, and for the reason that the surrender of the sunken wreck on the bottom of the river, from which no realization can be made, absolutely put an end to all liability of the owner of the property surrendered. Surely the contrary would be destructive of the law that the liability of owners of vessels is confined to the value of the property surrendered at the end of the voyage.

We are also aware of the fact that it was decided in the collision case of The Washington and The Gregory, 9 Wall. — and in other cases since, that both vessels being in fault in causing damages to an innocent party, both were liable, and that the damages should be equally apportioned, with the right reserved to the libellant to collect the entire amount from either in case of inability of the other to respond, but that was not in any sense this case, and is no authority for the party who has paid full damages to recover back from the co-wrongdoer half the amount so paid, or to detain it out of what he may owe such party, and certainly is not an authority, when the debt so paid in full could not be collected in whole or in part from the first party. In that, and in the other cases where that case was followed there was no surrender of the offending vessel, and the doctrine of the limited liability provided by Congress was not invoked, discussed or passed upon.

Again. The decision of the Court of Appeals is in effect, that one wrong-doer can recover from his co-wrongdoer, one half of what he has been compelled to pay. This is not the law.

In Addison on Torts, (edition of 1891) p. 21, the law on this subject is stated as follows:

"No contribution can be claimed, as between joint wrong-doers. If therefore, a plaintiff, who has recovered a judgment against two defendants for a joint trespass, levies the whole damages on one of them, that one has no claim for a moiety of the damages from the other."

And surely, if he cannot recover it, he cannot detain it from what he owes, and especially not in this case, for the officer and the pilot of the Dumois are presumed to have known the law and that her movement to port with a starboard helm was in violation of the Act of Congress and the Regulations of the Board of Supervising Inspectors of Steam Vessels, and would in all probability produce a collision, if the pilot of the other vessel obeyed that law, as he did.

Another question of law in this case is, can the decree of the Circuit Court of Appeals, in the absence of any findings of fact and conclusions of law based on said facts, by the District Court, be sustained? In other words is there anything which the Cour of Appeals can review?

This question was discussed by Mr. Justice Brewer, presiding at the Circuit Court of Appeals for the Eighth Circuit, in the case of the Pioneer Fuel Co. vs. McBier et als., 84 Fed. Rep., p. 495, and we submit the point upon the discussion there had.

ARGUMENT AS TO MATTERS OF FACT.

Two questions will be here considered, to-wit: those that relate to the fault of the collision, and, second, those that relate to the value of the Argo.

First, who was at fault in causing said collision? In discussing this question it will be necessary to ascertain

where the vessels were in the river when they first came in sight of each other, what they respectively did to avoid coming together, and where they were in the river when they did collide. And in doing so, we will give the evidence on each side, and also notice what we think are errors in the opinion of the Court of Appeals.

At the outset it is proper to remark, that all of the witnesses when speaking of distances up and down the river, speak of them as they appeared in the night time, when the estimates, at best are mere guesses, and such guesses even when quickly made in broad day (and here they were quickly made in the night time) and without the assistanee of mile posts or other monuments, are of little value, and ever so much less when made in the night time. But these observations do not apply with equal force when witnesses are speaking of location (and not distances) between two known or given objects, where both such objects are in sight, and the point estimated, and from which the observation is made, is between two such known objects. For instance, a party might well be able to tell approximately, when on a vessel in the middle of the river, whether she was in the centre or not, because there are two objects—the banks of the river on each side—to guide and assist the judgment, while in looking ahead, the observer has no known objects to assist him, and as said before, any estimate of that kind is but a guess, and probably far from correct.

WHERE WERE THE VESSELS IN THE RIVER WHEN THEY FIRST CAME IN SIGHT OF EACH OTHER?

On the Argo, James Brown, her master and pilot, was on watch and at the wheel steering, and immediately alongside of him, and also on watch, at the time the Dumois lights were discovered, was his lookout, Desemus, while those on watch below were Orkney, the engineer; Broadhurst, the fireman, and Green, the cook, though not on watch was in the cabin and awake. Those not on watch and in their berths at the time of the collision and prior thereto, were Blesine, Hester, Lindauer and Cranz. The evidence of the above parties on the above point (except Hester and Blesine, who were drowned), and Cranz, who has not been called by either side, is as follows:

At page 48 Brown was asked and said as follows:

Q. Whereabout in the river were you when you first noticed the steamer which came in collision with you, where was your boat, in what part of the river? A. I was in the middle of the river.

Q. Were you going down stream? A. Yes, sir.

And at page 49 said:

Q. Over what bow of your vessel did you see? A. Over the port side of our bow.

Again at page 50, middle:

Q. In what part of the river were you when you first noticed him? A. In the middle of the river.

Q. Heading which way? A. Down stream.

And at page 53 he said:

Q. Well, how far away was the boat when you first saw her before you gave the signal? A. She was about three-fourths of a mile away. I guess about three-fourths of a mile the way I was going. I understand it now.

Yes, sir. I saw her some time before I blew the first whistle.

DESEMUS was asked, and said, at page 79, as follows:

Q. Where were you just before the collision occurred —on what part of your boat? A. I was with Captain Brown, standing by his side on the bridge that acted as the pilot house—it was above the pilot house.

Q. Did you pass any other boats before you came —before the collision occurred, a short time before? A. Yes, sir.

Q. What boats were they? A. I couldn't say the name, sir—there were some steamers, and I looked at the lights, one that I passed—there were some small craft with it.

Q. Where were they, on what part, what side of the river? A. On the east side, New Orleans side.

Q. Whereabout in the river were you when you passed these boats? A. I should judge in the center.

Q. What kind of a night was it? A. It was a clear night.

Q. Could you see the banks of the river without difficulty? A. You could see the trees, dark shade.

Q. When you passed this—you say you passed something on the left, east bank? A. Yes, sir; I thought it was the Day Dream or some of them small boats towing luggers.

Q. Did you give any signal to these boats? A. Yes, sir, I gave one—at least Captain Brown gave one to them.

Q. About that time did you notice any other lights anywhere, if so, where? A. Shortly after we passed the

last craft I saw the light, I was on the outlook, I saw a red and white light.

Q. You were on the outlook? A. Yes, sir.

Q. What bow of your boat did you see them over? A. I saw them on my left hand.

Q. Over your port bow? A. Yes, sir.

Q. Where was this red and white light that you saw in reference to the bank of the river—what bank was it on? A. On the New Orleans bank, on my port side.

Q. How far off was it when you first saw it? A. About three-fourths of a mile.

Q. Do you know whether Captain Brown saw it the same time that you did or about the same time? A. I think he did, because as soon as I saw them I said, Captain, there is a vessel coming; he said, yes; he waited a little while, I expected to hear the vessel blow, she didn't blow, so he blew one blast of his whistle.

The court says this witness was not on watch, or rather that Brown was the only man on watch at the time the vessels came in sight of each other (pp. 334 and 337), even conveying the idea that there was neither an engineer running the engines, or a fireman feeding the fires to make the steam to run them, but this is clearly wrong. Desemus was the deckhand on the Argo, and Brown was asked, and said, at page 49, as follows:

Q. Was any one on watch with you on deck? A. Yes, sir; the deckhand was right alongside.

And at page 57 said:

Q. Where was Deseamus? A. He was right alongside of me at the wheel; the wheel was abaft of the pilot house on deck; I was standing right up there.

Q. You had the wheel? A. Yes, sir; always.

Q. And Desemus was standing alongside of you? A. Yes, sir.

Q. How long had he been there? A. Off and on since we left; I kept him there in case I wanted to send him anywhere; he was lookout too. * * at page 66 said.

Q. At the time the collision occurred then, was there a full complement on watch in running the boat? A. Yes, sir; the lookout, and cook he was about; myself, engineer and fireman.

Q. Where was the lookout stationed? A. He was up on deck, on the upper deck along side of me. He was right up alongside of the wheel. (From which place he had the very best and an unobstucted view.)

And the above evidence, apart from being contradicted by no one is supported by Desemus himself, who after stating he was deck hand (p. 79) and telling how Captain Brown gave a signal to the Day Dream, was asked at page 80.

Q. About that time did you notice any other lights anywhere, and if so where? A. Shortly after we passed the last craft, I saw a light, I was on the lookout, I saw a red and white light.

Q. You were on the lookout? A. Yes, sir.

ORKNEY, the engineer's evidence on this subject, though not so direct is still clear, for just previous to the signal that preceded the colllsion he had come up from the engine room and looked out and saw lights of the tow (Day Dream) opposite the Argo on the opposite bank of the river. At page 69, middle, he states this matter as follows:

Q. When you came up, as you have stated, and looked out and saw the Day Dream, or the Day Dream's

tow? A. I saw a tow, I didn't know what vessel it was.

Q. How far were you from that tow with reference to the bank of the river—were you close into the side the Day Dream was, or on the opposite side, or in the midde? A. No, I guess we must have been in the middle, because we were so far away; I could make out it was a tow by the lights, but I didn't see the vessel at all.

Q. The night was clear? A. Yes, sir, it was a good night for seeing lights.

GREEN, the cook and steward, was asked and said, at page 100:

Q. Mr. Green, at the time you heard the cross signal and you looked out, could you tell in what part of the river the Argo was, whether she was in the middle of the river or whether she was near the eastern bank or near the western bank? A. She appeared to me to be in the middle of the stream, or might be, according to my idea, a little closer to the west bank than to the eastward. * * *

Q. You could see the banks? A. I could see either bank, I could see a long ways.

Q. Now after you got into the yawl boat and the Argo had sunk could you see the banks of the river then? A. Yes, sir; we were closer to the west bank than to the east bank (confirmed by the finding of the wreck 500 feet from the west bank), and we started for the west bank, it being the closest, to try to get there with the yawl boat.

This evidence the court also failed to heed or notice, and while it is true Green after hearing the cross signal of the Dumois and seeing her "apparently crossing the river" (Rec. p. 96) said he saw both signal lights when he

put his head out of the trunk, as he certainly could have done if she was there on a starboard helm, it is equally true he said the Argo was in the middle of the river, and had the Dumois not changed her course to show both signal lights to Green when he first looked out—his statement as to lights indicates that the Dumois was farther from the east bank than is claimed.

BROADHURST, the fireman, was in the fireroom and saw nothing until after the collision occurred.

Such is the evidence of those on board the Argo who made any observation on the position of the vessels prior to the collision.

On the Dumois it is claimed, that owing to the time for changing watches having arrived, and the ship having approached port, all four seamen and the carpenter were on deck (p. 264), one, Johnson, was on lookout, two were coiling up ropes on the forecastle, one, Larsen, took the wheel after the signals were crossed from Wessel (p. 302), yet only Larsen, who took the wheel from Wessel, the pilot, Lombard, and Sabitsin, the second mate, have been examined, and why the others, and especially Johnson, the lookout, and Wessel, the man at the wheel when the signals were crossed and the collision was imminent, and the carpenter have not been examined has not been satisfactorily explained.

It is true the master, Ruatad, at page 212, has tried to account for Johnson not being called, by saying he (Johnson) "wanted me to pay him to stay; he wanted me to bribe him to stay," but surely this is no excuse for not examining him de bene esse, if it is true he was about to go away, and prosecuting him if he swore falsely for perjury in the courts that are open as well to the

Norwegian as an American. But there is no excuse whatever for not calling Wessel, Neilsen, or the carpenter, all of whom could have thrown light on the facts of this case. Their not being called is a strong presumption that their evidence would not support the defense in this case, and would support the claim of the libellant.

LUMBARD, pilot of the Dumois, after stating she was 210 feet long (p. 239), that she was near the eastern bank a short distance below the New Canal—a quarter or a half mile—(p. 240) when he discovered the Argo's lights, was asked and said at page 241 as follows:

Q. What lights did you see at the canal, or near the canal? A. I saw a lot of bright lights—white lights.

Q. Did you see the side lights and white light of the Argo? A. I saw her red, green and white lights.

* * * * * *

Q. When you first discovered lights near the canal, what impression did it make on you? A. That she was one of the lugger boats, tugboats, making up a tow there.

Q. When did you become convinced that the vessel was descending? A. Not until after I had blown my two whistles and he answered me with one, when I was convinced she was coming down the river under way. * * * *

Q. Why did you blow two whistles? A. Well, because I wanted to let them know I was coming up and also thinking she was coming close along the bank I naturally gave her two whistles. I was out—

Q. How far were you from the east bank when you blew these two whistles? A. I should judge about a ship's length (210 feet).

Q. Where were those lights of the luggers at the new canal at the time? A. They were right at the canal, as near as I can judge.

Q. Did they appear to be dead ahead? A. After I hauled out they were a little inside, when I first sighted them, they were dead ahead.

Q. Why did you haul at that time? A. I hauled out to clear the luggers, and also the steamer that was there.

And at page 242 said:

Q. You say when you first discovered the lights of the Argo you were about a ship's length from the east bank of the Mississippi river? A. Yes, sir.

Q. State whether you saw all the lights of the Argo dead ahead or otherwise? A. They were dead ahead—if anything a little inside of us.

And at page 243 said:

Q. From seeing three lights on the Argo at the time you blew your two whistles, can you say where the Argo must have been or was in the river? A. She was close to the canal—close to the lugger landing.

Q. Close to which bank of the river? A. To the east bank of the river.

NICHOLAS SABITSIN, second mate of the Dumois, who claims he was on watch and on the bridge of the Dumois with Pilot Lumbard, places the Dumois double the distance (at one time 420, and another time 500 feet, p. 265) from the east bank, and the Argo dead ahead of her, when the vessels first came in sight of each other. He was asked and said at page 258 as follows:

Q. Where was the Dumois in the river at the time the lights of the Argo were first discovered? A. She was close to the east bank, very close. * * *

Q. How far was the Dumois from the Argo when you first saw her lights (p. 259)? A. I should judge about half a mile when we discovered it to be a steamer. * * *

Q. When you first saw the Argo's lights did you see all three at the same time? A. Yes, sir.

Q. State whether the Argo's lights were dead ahead when you first discovered them? A. Yes, sir, a little inside of us near the bank.

And at page 265, was asked and said:

Q. How close were you to the bank? A, I disremember, we were about a couple of ship's lengths from the bank.

Q. How long is the ship? A. About 200 feet.

Q. And this boat, this steamer's lights that you saw inside were closer to the bank than you were? A. Yes, sir. * * *

Q. Wasn't she, according to your notions, closer to the east bank than the luggers? A. No, sir, she was not—he was outside the luggers.

Q. The luggers had not made a landing in there yet, had they—they were turning in there to make a landing—they had not yet gotten to the bank? A. They got pretty close to the bank, closer than him—mostly in the bank.

And at page 274 was asked and said:

Q. You say you were coming up the east bank? * * * A. Yes, sir.

Q. Was it necessary for you to turn out into the

stream to pass the luggers? A No, sir, I don't think that was just the thing for him to be close to the bank.

Q. And the Argo was closer into the bank than the luggers? A. No, sir.

Q. How far? A. She was farther out than they, nearer on.

Q. Nearer to your line? A. Yes, sir.

Q. What lights did you see? A. I saw all her lights; she was heading right at us.

Q. Suppose two ships are approaching each other half a mile distant, and you see all the lights, side lights and masthead lights, doesn't that indicate to you that you are meeting head on? A. Yes, sir.

Q. Then you saw the Argo approaching you head on? A. Yes, sir, mostly. * * *

Q. Those lights you saw, all three? A. Yes, sir.

Q. That indicated to you that you were coming head and head? A. Yes, sir.

And at page 275, he was asked and said:

Q. And you were about 500 feet from the bank or 600? A. Five hundred, I should think. * * *

Q. They (the luggers) would be 50 feet? A. Fifty feet, the two of them. * * *

And at page 276, was asked and said:

If you were coming 500 feet from the bank, and there were luggers 50 feet wide, that would leave about 450 feet.

Q. Don't you know there was 450 feet? A. I said about.

Q. Your judgment was as you stood on the bridge and looked up the river and saw these luggers on the bank of the river as you came up, that there would have

been about 450 feet of space between your ship and the luggers as you went up stream, that is if you had kept your course, right up? A. Yes, sir.

LARASEN, a steersmen on the Dumois, whom the court pronounces "an able seaman" (334), but who said he did not know "that when one boat blows two signals and the other boat blows one signal that indicates that the boats are about to come together" and who in fact did not know what cross signals were, and yet was put at the wheel in this position of the vessels in the place of the man removed, was asked and said at page 297 as follows:

Q. How was the wheel of the Dumois at the time you relieved the other man? A. It was lying starboard.

Q. What was the course of the vessel at that time? A. We had no light in the binacle, we steered after the pilot's command and the vessel was swinging, turning, moving.

Q. Which way was she in relation to the banks of the river? A. She was swinging from the bank to port.

Q. From which bank of the river was the Dumois at this time, how far from it was she? A. It was the east bank I think they call it, I am not sure, it was the bank on the starboard side, about half a ship's length away.

Q. Did you see the lights on the approaching steamer? A. Yes, sir.

Q. When did you first see them? A. A minute or a minute and a half after I had taken the wheel.

Q. In what position was she approaching, was this approaching vessel at that time head on, or how was she

in what position did you have her when you first saw her? A. On the starboard.

Such is the evidence of those who were examined from the Dumois, and, in fact, all the evidence of the claimants on this point, except that of Nick Theodore, master of the tug Day Dream, (whose evidence will be noticed hereafter) who could not tell the width of the river anywhere and whose statements are so confusing and uncertain, that they would indicate the party was incompetent or demented, and are of no value in this discussion.

And if all of the foregoing evidence—that of both parties—stood alone it would be hard to determine whether or not the Argo was at said time in the middle of the river or near the eastern shore—210 or 500 feet from the bank—but fortunately for the Argo, the evidence of her crew is fully sustained by parties who were on board of the luggers, or on the towboat at the eastern bank of the river and saw the lights of both boats as the Argo came down and the Dumois came up the river, and who place the Argo in about the same position as her crew, to-wit: in the middle of the river.

JURISH, who was master of one of the luggers at the canal, which had previously broken lose and had been returned to the landing just prior to the vessels coming in sight, and whose lugger was lying on the outside of the Day Dream and from 40 to 50 feet from the bank, was asked and said, at page 91, viz.:

Q. Did you notice steamers coming down the river while you were there? A. Yes, sir; I saw the steamer coming down the river and he blew one whistle. I think

that was for the Day Dream and the Day Dream answered him with one.

Q. Where did he pass down—in what part of the river was he, could you tell? A. The boat coming down the river?

Q. Yes. A. I wouldn't swear, but I think he was coming right in the middle of the river, the same way any other steamer would come down. After a little while he blew another whistle again. He was a little more to the east, but like any other steamer, about in the middle of the river, a little more to the east, may be, a little more.

Q. Then you say he blew another whistle? A. Yes, sir. Then I looked down the river and I saw the steamer coming up the river on the east side of the Mississippi river. * * * And at page 92, he said:

Q. Was the big steamer crossing the river at the time the boats came together? A. Yes, sir, she was crossing the river.

Q. And the little boat was coming down the river about in the middle? A. Yes, sir.

Q. And the big steamer was crossing from the east to the west side? A. Yes, sir. * * *

Q. And the little steamer was coming down in the course—A. Yes, sir. And at page 93, said:

Q. The way steamers come down? A. Yes, sir.

Q. What I ask you is this—while the little steamer was coming down the river on her course, wasn't the big steamer crossing over the river in front of the little steamer? A. In front, yes, sir; sure.

The court says this witness "gives no satisfactory evidence as to where the Argo was when she first came

in sight of the Dumois," but this is clearly an error. It is true the witness speaks guardedly, for he was on the eastern bank and saw the vessels distant in front of him, and could not state the location of the Argo with exact precision, but he certainly places her far from the eastern bank, and "about in the middle of the river, a little to the east may be, a little more." But this is not all of his evidence on this subject, for he was recalled and had his attention called to a sketch made by him (copy of which is to be found on page 157) of the vessels at various times as they were seen by himself and Deedes (which he swears is correct), and their positions at such times are marked by him by the figures 1, 2, 3, 4, 5 and 6, of which he testified at pages 107 and 108, as follows:

Q. Now then coming down the river I see a mark of a boat marked No. 1. A. That is the steamship coming up on the right side of her.

Q. No. 2 what is that? A. That is the steamship when starting across the river.

Q. No. 3? A. That is were the collision took place, that is where they met one another.

Q. No. 3 are two boats? A. Yes, sir.

Q. No. 5? A. That is the Argo.

Q. That is the Argo? A. Yes, sir.

Q. No. 3; the upper one at No. 3 is the Argo also? A. Yes, sir.

Q. No. 6? A. That is the Argo when I first saw her coming down the river that is the time she blew her whistle for the Day Dream.

Q. But these are the positions of the boats in the river as you saw them? A. Yes, sir.

Q. Then you say the Argo was coming down in

what part of the river? A. She was coming like any other steamer or tug (which means in the accustomed course).

Q. What part of the river? A. In the middle of the river, but perhaps a little on the east side.

Q. Was she close to or far away from the bank on the east side? A. No, sir.

Q. She was far away? A. Far away, yes, sir.

If this is not direct and clear, and hence satisfactory, it would be hard to find evidence on any subject that is satisfactory.

DEEDES (p. 148), was pilot on the Day Dream, saw the Argo and heard her signal the Day Dream as she descended the river and passed the latter, and said latter's signal in reply, then the Argo's signal to the Dumois and the latter's cross signal in reply, which caused him to notice her and see her shooting across the river. This witness was examined as to the locality of the vessels when they came in sight of each other by reference to the above map or diagram on file marked "Libellant 3," and which was prepared under the direction of the preceding witness, and when shown this map the witness said (p. 150) it was pretty much correct, and with said map before him, at page 151, was asked and said:

Q. Here is No. 6 boat, what would you think—what would you think that to be, No. 6 boat coming down the river? Would you take that to be the Argo coming down? A. The only boat coming down was the Argo.

Q. Now, then, when you first saw her it blew one whistle? A. Yes, sir.

Q. Then afterwards the Day Dream answered that one whistle? A. Yes, sir.

Q. That would be when she would be about there and you down here? A. No, sir. Somewhere about where No. 5 is.

And this was when she whistled for the Dumois, and this places her where she is located by all the other witnesses for the libellant, in the middle of the river, and confirms the evidence of those on watch on board of the Argo.

And all the probabilities of the case point to Brown being where he says he at the time was, in the middle of the river. He was a skillful and experienced pilot of a great many years' standing—one who knew how many degrees there were in a point of the compass—his objective point was the jetties, which he was in great haste to reach, and not the east bank of the river at the New Canal, and he well understood that he was to reach that point as soon as the streamship Whitney, which had preceded her some hours. Under this condition of things, why should he be on the east bank instead of in the middle of the stream, where he would get the benefit of the current and make the best time and be facilitated in accomplishing the purpose of his trip? Not only the evidence, but all the probabilities are in favor of the Argo being where the libellants' witnesses place her; and this probability, even where there is a conflict, is not to be overcome except in case of a clear preponderance of evidence.

In the case of the City of New York 147, U. S., p. 79, the Court said: "Indeed, the probabilities that a steamer * * * will pursue the course customarily pursued in that vicinity by vessels bound from and to the home port, is so strong that deviation from that course

without apparent cause will not be considered as established without a clear preponderance of the testimony."

And that the middle of the river was the proper place under ordinary circumstances for a descending boat we will hereafter show.

We then have the evidence of Brown, Desemus, Orkney, Green, Jurish and Deedes on one side, supported by all the probabilities of the case, and further supported by the presumptions of the law, that when the vessels came in sight of each other the Argo was in the middle of the river, and demonstrated to be correct by the finding of the wreck of the Argo where she sank, 500 feet from the western shore (pp. 110 and 114), after the collision without moving to either the eastward or westward, and opposed to this is only the evidence of Lumbard, Sabitsen, Larsen and the ignorant and demented old Nicholas Theodore, who could neither read the statutes, pilot regulations, or figures and directions on the charts which should control him, and who in demonstration of his incompetency and ignorance of said statutes and regulations, and of the "starboard hand rule" or "rule of the road" which said regulations declared should be a "standing rule" for the government of pilots when vessels were meeting end on or nearly so, declared the Argo should have continued "right straight ahead" (p. 226) although he says he did not know whether she was going toward him at the bank of the river or down the river (p. 229), and that the Dumois in opposition to said "standing rule," and notwithstanding the signal for the contrary signal, which he said he heard from the Argo, should have pursued the

"port hand rule;" who testified the Argo was so close to him that he could see she was a white boat from his own chimney light, and although so near, and although he could not tell whether this white boat, which he thus saw, was going towards him or down stream, yet was "scared" she would sink his boat lashed to a tree on the bank and protected from such dire disaster by the lugger outside of him; who never heard the Dumois' whistles, never saw her until she was crossing the river with her white and green light in view, when some one called his attention to her, testified the pilot of said Dumois was "scared of the lights" (his lights) and "could not come on top of me" (him) "and sink me" (him) lashed to the bank with Captain Jurish's lugger on the outside of him, and all extending less than 50 feet from the bank; and yet the evidence of this "scared" old, ignorant, demented and pretended pilot, who did not know the width of the river on which he pretended to be a pilot, any where, not even at New Orleans, where he testifies it is a mile wide, while the fact is (as the chart, which he cannot read, and for which he says he has no use) shows is half a mile wide, the court refers to and adopts, saying at page 334:

"Nicholas Theodore, pilot on the tug Day Dream, which with its tow was about to land (had landed) at the lugger landing on the left bank just above where the collision took place, says that the Argo passed so close to him that he could see her color, that she was about 50 feet from him and he was afraid she would run into him."

And the intelligent, clear, direct evidence of Jurish, who was *not* "scared" of being sunk, although he was on his boat on the outside of the tug Day Dream, is re-

jected as unsatisfactory. Surely an attentive reading and analysis of the evidence of Theodore will show that it is worthless, biased and false, and of no value in determining anything in this case, and that the weight of evidence—that of said Brown, Desemus, Orkney, Green, Jurish and Deedes, six witnesses to three, with all the presumptions of law and fact in its favor, shows the Argo was at the time, where she claims to have been, to-wit, in the middle of the river.

Again. The river at this place is about 2,400 feet wide (see chart of Mississippi River Comm'r), and if the Argo was as close to the east bank as the Demois' witnesses put her, how does her wreck get within 500 feet of the opposite bank? There was not sufficient time from the moment the signals were crossed for her to have reached that point, unless the Argo was near the middle of the river, and in fact not sufficient time for the Dumois to have reached that point, farther to the westward than the Argo was (because the Argo struck the Dumois on her starboard side). The finding of this wreck is like the last fixed and certain point in a survey where all other points or corners are missing, but which can easily and certainly be found by running the back courses, and this, in this case would bring the Argo at the time in question where her witnesses put her, in the middle of the river.

But it is said in reply, how did the Dumois get from the eastern shore to within 500 feet of the western bank where it is claimed the collision took place? In reply we say there is no proof, nor is there any admission as to how near she was to the eastern shore. Larsen, the last man at the wheel, who took charge after the signals

were crossed and when the Dumois' wheel was hard astarboard, says she was half her length, 105 feet from the eastern bank. Lumbard says she was a ship's length, 210 feet; Sabitsen says she was 500 feet from said bank, and Theodore (*did not*, as the court finds) say the Argo was 50 feet from him or his boat, but on the contrary said "I could not tell how many feet it was away" (p. 225), and that she was more than 50 feet away (p. 229). And all that is said in the pleadings of Springer, is the indefinite assertion that the ascending steamer was "on the east bank" (p. 1), and in his answer found, on page 30, that there was fully 300 feet between the course the Dumois was then running and the luggers, all of which means the Dumois was toward the eastern bank, and, as the Argo's witnesses state, off the Argo's port bow.

But again it is said, suppose she was toward the eastern bank and not close against it, and to the eastward of the course of the Argo, being a much slower vessel, how could she get across the bow of the Argo? It is to be borne in mind that the Dumois was the ascending vessel, and when she swung her starboard side to the four mile current (see evidence of diver Conrad pp. 167 and 168) and diagonally across it, and thus received the very strong wind then blowing on her starboard beam, she had not only the force of her steam power propelling her, but the force of said strong current and wind greatly assisting her, and which would nearly double her speed, while the Argo being the descending boat running with the current would be impeded by the current in her starboard movement with a port helm, and would not be assisted by said wind, which would only strike her on her stern after her bow began to turn to the westward.

In fact we believe that when both vessels were thus crossing the river, the speed of the ascending vessel in crossing the river was far greater than that of the descending vessel, and this theory would get both vessels to the point where the collision occured (as evidenced by the finding of said wreck) within 500 feet of the western bank. If the Dumois was where she claims she was when the vessels came in sight of each other, and was only making 10 miles per hour in crossing the river, and was not greatly assisted by the strong current and wind on her starboard side while crossing diagonally across it, how did she within the time stated get to the place where she says the collision did occur, to-wit in the middle of the river? And if the vessels were "head and head" as is claimed, and the speed of the Dumois was not increased by the strong wind and current in crossing the river, and the Argo impeded by said current while crossing, the Argo being under ordinary circumstances the faster boat, and both vessels swung to the westward at the same time, how is it possible that the Dumois could have gotten farther to the westward than the Argo, where she certainly was, for the Argo struck her on her starboard bow? No other theory than the above would put the Dumois where she claims she was when the collision occurred.

Surely, the foregoing evidence, and especially the direct and positive evidence of Jurish, who has no interest whatever in the case, and who saw the Argo when she first whistled to the Day Dream and continuously thereafter until she sunk, and who says she was *far away* from said eastern shore where he was a spectator, cannot be wrong.

And that the wreck of the Argo does lie sunk (as above stated) 500 feet from the western shore, and never moved after the collision occurred, except perhaps floated down stream for four minutes until she went out of sight to the bottom, we will show under the head as to "where in the river the boats came in collision."

II.

WHAT DID THE RESPECTIVE VESSELS DO TO AVOID COMING TOGETHER?

Captain Brown's description of what he did begins at page 49, where he was asked and said as follows :

Q. A short time before you saw this boat (Dumois) did you see any other boat? A. Yes, sir, I passed the Day Dream; she was on the east shore; she was making a landing, I think—something of that kind. * * *

Q. Did you give any signal to her? A. I blew one signal to her and she answered by blowing one.

Q. When you passed her did you see any other vessel? A. Yes, sir, I saw the vessel.

And at page 49 said :

Q. What did you see, rather? A. I saw a bright and red light coming up on the east shore. * * *

Q. Over what bow of your vessel did you see? A. On the port side of our bow, forward. * * *

Q. Upon seeing it did you give any whistle? A. I blowed one whistle.

Q. Prior to your blowing one whistle had you received any whistle, had you received any whistle from the other boat? A. No, sir, not anything.

Q. After you blew one whistle, what then? A. It

was some time before she answered by blowing two blasts of her whistle—the ship coming up.

Q. What did you do then? A. I immediately afterwards, I blowed again. I repeated with one whistle again, and then put my helm hard a-port.

Q. When she blew two whistles was there any change in her course? A. Yes, sir, I could see she had starboarded her helm.

Q. What lights did you see then? A. I saw the green light coming out after she changed her course.

And at page 50 said:

Q. That indicated to you what? A. That he was going across my bow.

Q. He was going across your course? A. Yes, sir.

Q. After he blew two whistles? A. After that he never blew any more until he blew his alarm.

Q. After you blew your one whistle the second time did he reply with two whistles? A. No, sir.

Q. What did he do after you blew your one whistle the second time? A. About that time he was right on top of me—very near me; then he blew his alarm.

Q. Did they come together—did they come together shortly after that? A. About 15 seconds. * * *

Q. After the collision occurred what was done—how did they strike together, where did they strike? A. I struck the Dumois eight feet aft from her stem—eight feet.

Q. Did you examine the place afterwards? A. I saw it when she was at the dock. Then the vessel was going so fast it was half a mile before her headway was stopped, she went by me so fast. She was five or six seconds passing me. * * *

Q. By one blast of your whistle and the porting of your helm, what was the purpose of that? To which way did you want to go? A. I wanted to go to the westward, on the other side, out of his way; I was quartering. By the velocity I was going I was sure I could have passed him. We were going pretty near 20 miles an hour.

Q. Was the Argo a fast boat? A. Yes, sir, she was a very fast boat—a fast yacht. But he steered right across my bow. * * * (Page 51.)

Q. How far past you did she go before she stopped—you drifted astern? A. No, as soon as I got under her stern I told the engineer we would try and get to the west bank. We were going across; she was up the river nearly half a mile before she stopped, passed us.

DESEMUS, the lookout and deckhand, was asked and said, page 80:

Q. When you passed this, you say you passed something on the left bank—east bank? A. Yes, sir; I thought it was the Day Dream, or some of them small boats towing barges.

Q. Did you give any signal to these boats? A. Yes, sir, I gave one—at least Captain Brown gave one to them.

Q. About that time did you notice any other lights anywhere; if so, when? A. Shortly after we passed the last craft I saw a light. I was on the lookout. I saw a red and white light.

Q. You were on the lookout? A. Yes, sir.

Q. How far off from you was it when you first saw it? A. About three-quarters of a mile.

Q. Do you know whether Captain Brown saw it at

the same time that you did, or about the same time? A. I think he did, because as soon as I saw them I said, "Captain Brown, there is a vessel coming." He said, "Yes." He waited a little while. I expected to hear the vessel blow. She didn't blow, so he blew one blast of his whistle.

Q. What was the next thing that occurred? A. About 10 or 12 or 15 seconds after he blew we got an answer of two whistles. Captain Brown blew one immediately. We got no answer and Captain Brown headed her to Algier's bank, and this vessel took a change and came across the river.

Q. She left the east bank and came across the river to the west bank? A. Yes, sir, towards the west bank.

Q. When she came across did she make any change in her lights? A. Yes, sir, I saw the green light and the masthead light as well.

Q. Was the red light shut out? (p. 81) A. Yes, sir. I saw the green light all through the change when she was going across the river.

Q. As soon as the Dumois crossed the Argo's signal, and the red was shut out and the green light appeared, what did you do then. A. I left the bridge and started back aft.

Q. For what? A. To wake up the people. I thought there was going to be danger right then. I saw a ship crossing our signal and I ran aft.

Q. Did you call them? A. I didn't go all the way aft. I stopped right at the engine house door, about amidships.

Q. How long did you stop there? A. Maybe about two seconds. I just stood there and saw the ship, then

I ran aft right away. I don't think I was four seconds going from the bridge aft, and I hollered below for them to get up quick, there was danger. As soon as I hollered danger they struck. I didn't see her strike, but felt her strike, and fell towards the companionway aft the cabin and was knocked down. I got up on my feet quickly and hollered down she was sinking, to get up quickly, and then I left the deck of the cabin for the yawl boat. But the Dumois, she had gone way beyond us. * * *

Q. I want you to be sure who it was who blew the first signal ; was it the Argo or the Dumois? A. The Argo.

Q. And that was responded to by a cross signal of two blasts? A. From the Dumois—yes, sir.

Q. Then Captain Brown blew one signal? A. Yes, sir, immediately after the two were blown.

Q. Then what signals did she blow? A. I never heard any more at all until just about when I got amidships—well, before I got amidships, when I was running I heard a lot of hollering and a lot of whistles from the ship—danger signals I suppose they were blowing. * * *

ORKNEY, the engineer, at page 68, said:

I heard the whistles distinctly, both our own and others, and my attention was drawn to a cross signal given by this vessel we had a collision with. I did not know what vessel it was, but previous to that I had come up from the engine room and looked out, and I saw this tow passing, what looked like a tow passing, and I heard her whistle and saw her lights, and then I went below again and heard our captain blow the whistle which I supposed was for another steamer, and then I heard two whistles blow, which I thought was unusual, and I came

up to see what it was, and I could see the white and green light of the vessel (that is, after she had changed her course), which I knew was wrong. It should have been the white and red light. Then I hollered to our firemen, "We are gone." I could see then we never could recover ourselves. It was a very short time between the time they blew the signal and I saw this light, and I kept putting my head further up through the companionway. I was not out of the engine room a second—no time, hardly—when I saw the loom of the vessel going right up against our bow; then I saw the balance of her coming up out of the darkness. Immediately after that we struck her, and the concussion threw me down the engine room ladder, which was about four or five steps. With the shock the engine stopped, so I came on deck again, and I looked around, and they commenced to get the boat out, and then I went below again and looked around and saw her head pointing towards the bank. * * * (Page 69.)

Q. How soon was it after the collision that this steamship Dumois disappeared—the boat that collided with you—did she disappear immediately? A. Yes, sir.

Q. Was she stopped? A. She could not have been stopped at the rate of speed she was going, because when we got in the boat we couldn't see her. She had gone up the river.

Q. Did she disappear as if under way? A. I should judge she was under way, the way she was coming towards us.

Q. Was she coming slowly or rapidly? A. She was coming rapidly, because it was immediately after I saw the lights that she came right on us. (Which, of

course, was after she had changed her course, as above stated.)

Q. After she struck how long was it before she disappeared? (p. 70.) A. Not half a minute before she was gone, because we just crashed into and scraped along her sides. * * *

And said at page 74:

Q. Of the two boats, which blew the first signal, the Argo or the Dumois? A. The Argo blew the first signal.

Q. That was one blast? A. Yes, sir.

Q. What response was there to that? A. He blew two.

Q. And then the next blast? A. Then Captain Brown immediately blew one.

Q. Then what was next? A. The next was the danger signal from the Dumois, but they were all so close together there was very little time between them. * * * (Page 75.)

Q. When did you go on deck again? A. Not until I heard the whistle blow again.

Q. Not until you heard the signal from the Dumois? A. Yes, sir; not until I heard the cross signal; that was what brought me on deck.

Q. Then the Argo replied by another signal? A. The first signal she blew was answered by the Dumois with two, then the Argo blew one again.

Q. That was all the Argo blew? A. Yes, sir; then the Dumois blew the toot whistle—that is, the danger whistle; she loomed right up; she was no distance at all from us.

GREEN, the cook and steward, was asked and said, at page 96:

Q. Just prior to the collision did you hear any whistles? A. Yes, sir, I did.

Q. What whistles did you hear? A. The first whistle I heard was the Argo.

Q. What did she blow? A. She blew one blast of the steam whistle, to go to starboard.

Q. Was there any response to that? A. Yes, sir.

Q. What was the response? A. Two whistles.

Q. How soon did the response come after the Argo had blown the one whistle? A. It was inside of a minute.

Q. Well, then, were there any more whistles blown? A. Yes, sir.

Q. What were they? A. The Argo blew one blast again.

Q. Was there any response to that? A. Yes, sir.

Q. What was it? A. Two, then three short whistles on top of it, or four from the other vessel.

Q. Where were you precisely when these whistles were being given by the two boats? A. I was standing in the hatchway that led down in the dining room and kitchen (p. 10). There was a pair of steps that led all the way down, and I was on the top step with my head out of the trunk looking out *when the second whistle was blown*

Q. You understood there had been a cross signal? A. Yes, sir. I knew a cross signal had been blown, and I knew there was something the matter, and I was looking out for myself.

Q. You came, then, where you could see? A. Yes, sir.

Q. Well, what was it you saw? Just tell us in your own language? A. I saw there was a steamer coming

up the river, apparently crossing the river, and I saw that our boat was bearing right on the vessel, or that the vessel was bearing right on to ours, either one or the other. I furthermore saw—it looked to me, the way it loomed up, that a collision was inevitable. * * *

Again, at page 99, he was asked and said:

Q. After the collision occurred, after the Argo had struck the Dumois, what became of the Dumois? * * * A. As far as I know—I think she stopped her engines and drifted around there in the river after she lost her headway. I couldn't say whether she backed or went ahead; I wasn't on board of her to know—she went by there like a railroad train after we struck; it was not two seconds when we saw her back—we passed right under her stern counter.

Q. She wasn't stopped? A. I don't know whether she was going ahead or backing her propeller.

Q. But she was disappearing up the river? A. Yes, sir, at a great rate of speed.

BROADHURST, the fireman, was down in the fire room, where he heard the passing signal of the Argo, and came up after the collision had occurred, and saw as follows (p. 87):

We left Algiers on the evening of the 27th, and some time between 12 and 1 o'clock I heard the captain signal to pass a boat—he blew a single blast of the whistle, and shortly after he blew that one he blew another blast, and shortly after that the shock came. That is all I know about it—that is all I can tell (p. 88).

Q. After the shock did you come up? A. Yes, sir.

Q. Then what did you see? A. The first thing I saw—I looked forward and I saw the Dumois. I didn't

know it was the Dumois then—I saw a steamer across our bow—lying right square across it.

Q. Lying still or coming up the river? A. Coming across our bow up the river.

Q. Did she disappear rapidly? A. Yes, sir. I didn't have much time to look after her. She went out of sight. * * *

Q. When you got into the boat and pushed away from the Argo did she go down very soon after? A. Yes, sir. We hadn't got more than 100 feet before she went down. * * *

Q. At that time where was the Dumois? Could you see her? A. No, sir. We could hear her engines working, but could not see her.

Q. Was she up the river? A. Up and across.

Q. How far up was she? A. I should say half a mile.

Such is the evidence of those awake on the Argo, as to what the Argo did to avoid the collision, as well as what was done by the Dumois.

On the other hand, the evidence of those on the Dumois is directly to the oppose, and to the effect that the Dumois blew the first signal (two blasts of her whistle) and that the Argo crossed it with one blast of her whistle. The evidence of these witnesses on this subject is as follows:

LUMBARD was asked and said, at page 242:

Q. State, as near as you can, what took place from the time you first discovered the lights of the Argo? A. I blew two whistles and the Argo answered with one. I then blew again to let her know I had starboarded my helm, immediately followed up with the danger signal

and immediately stopped and backed. It was not—well, I couldn't exactly say what time it was when the Argo—came around on a port wheel—ran into our bow, our starboard bow, about 15 or 20 feet aft of the stem. She was still going ahead when she ran into and struck. Then she—we were backing—she drifted a little astern of us. * * *

Q. What interval was there between your first signal of the two blasts and the repetition of those signals? A. The second time I blew the two whistles?

Q. Yes. A. None at all—very little. I blew two and then gave them the danger signal after two (p. 243).

Q. That was hardly the question I asked you? A. I didn't understand you, Mr. Grant. I blew the two whistles first.

Q. And the Argo answered? A. With one.

Q. You repeated your whistle? A. Yes, sir.

Q. What interval was there between the repetition of those two whistles? A. It could not have been two seconds.

Q. You answered the cross signal immediately? A. Yes, sir, with two and the danger signal.

SIBITZIN, second mate of the Dumois, who says he was on watch and on the bridge with the pilot, was asked and said, page 259:

Q. Which vessel blew the first signal, and what signal did she blow? A. The Dumois blew the first signal.

Q. What signal did she blow? A. She blew two whistles, starboard helm.

Q. Was there any answer? A. There was an answer of one whistle after that.

Q. What did the Dumois do then? A. She blew two again, and then the danger signal right away. * * *

Q. Can you state of your own knowledge that you did not hear a signal from the Argo before you sounded your signal? A. No, sir, no signal from the Argo before we signaled.

Q. Did the Argo answer the danger signal? A. No, sir.

Q. How long was it after the two signals were first blown by the Dumois that the Argo changed her course? A. I couldn't very well judge—not so very long between, because she was going such a horrible speed and we were going along first rate. It must have been some couple minutes, something like that.

Q. What did you see after she changed her course? A. We saw her red light. She apparently changed her course. We were going out in the river all the time and she followed us up.

And at page 270 said:

Q. You have already said you stopped and backed your ship and lost your headway; you have further said that your ship was across the current. Now, how could the Argo drift faster down stream than you would, with both being water born? A. Because our ship did not stop as soon as the engines was stopped.

Q. Then you went on past the Argo after the collision? A. We were going a little ahead, yet.

Q. How far ahead of the Argo did you go before you stopped, four or five lengths that you have spoken of? A. I mean three or four lengths; I mean she was astern of us when she disappeared, that is what I mean.

Q. Then you had gone up stream away from her? A. I suppose so; she was not stopped.

LARASEN, one of the streersmen on the Dumois, was asked and said at page 296 as follows:

Q. Where were you when the collision took place between the Dumois and the Argo? A. At the wheel.

Q. How long had you been at the wheel? A. Three or four minutes.

Q. Did you hear any signals from an approching vessel while at the wheel? A. No, sir.

Q. Did you hear any signal given by the Dumois, and if so, when was that signal given? A. I heard it after I had taken the wheel and before I took the wheel.

Q. After the signals were given by the Dumois did you hear any signals in response? A. The first time I heard one blow from the other.

Q. What was the next signal you heard, either from the Dumois or the approaching vessel? A. Likely from the approaching vessel.

Q. What was the next signal you heard? A. It was two whistles from the Dumois.

Q. How many whistles did you hear in response to the first signal of the Dumois that you have testified to? A. Only one.

Q. After you heard this single whistle, what whistle was given? A. I heard two whistles from our boat.

Q. Did you hear any response? A. No, sir.

Q. What was the next signal you heard? A. I heard six or seven short blasts from our whistle.

Q. Did you hear a whistle from any approaching vessel before the Dumois gave her signal of two blasts which you have testified to? A. No, I did not. * * *

Q. Which way were you facing at the time the first signal was given by the Dumois? A. When the first signal was given I was not at the wheel. * * *

Q. Had you taken the wheel at the time you heard the response to the Dumois' first signal? A. No, sir.

Q. When did you take the wheel? A. Between the first and second signal.

Here again the evidence of those on the Argo as to what each vessel did before the collision is fully sustained by Pilot Deedes, of the Day Dream, and Captain Jurish, of one of the luggers, both of whom were at the shore opposite and witnessed the operations of both vessels.

DEEDES, after describing how the Day Dream landed luggers, when one of them got adrift, how the Day Dream went after her and secured and landed her, at page 148 said:

We made a landing first at the canal (opposite to which the collision occurred) with these luggers, and one of the luggers got adrift, then we went after her, about 12 o'clock we went after this lugger.

Q. Did you get hold of her? A. Yes, sir.

Q. What did you do with her? A. We came up with her and made a landing just below the canal.

Q. Was there any boat in the river that gave you a signal? A. We were about making a landing when the Argo blew one whistle.

Q. Did you make any reply? A. Yes, sir, we answered.

Q. With one whistle? A. Yes, sir.

Q. After that did she blow again? A. She blew one whistle again.

Q. What was the next thing? A. I heard another boat blow two whistles; it must have been the Dumois.

Q. Did you see where the Dumois was when she blew two whistles? A. She was just behind the Day Dream.

Q. On the east shore? A. Yes, sir, coming up, hugging the shore.

Q. Well, then, when the Dumois blew two whistles did she keep her course or did she change her course? A. When she blew two whistles that drew my attention and I went over to the other side of her (the Day Dream) and looked and saw the Dumois crossing the river and saw the green shooting across.

Q. After the Dumois blew two whistles did the Argo blow another whistle? A. Yes, sir, she blew another whistle.

Q. She blew one blast? A. Yes, sir.

Q. After that what did you hear, if anything? A. The Dumois blew her danger whistle—four whistles.

Q. Did anything occur after that? A. Then the Argo answered with the same danger signals. (Of course the latter is a mistake, as the Argo did not blow any danger signal, but in all other respects this evidence confirms that of the Argo.)

Again, at page 150, this witness said:

Q. After the Argo blew her whistle as you have described, the Dumois then blew one whistle and crossed the river? A. How crossed the river?

Q. The Dumois blew two whistles? A. Yes, sir.

Q. And went across the river? A. She went shooting across the river. I could see her green light.

And again, at page 151, said:

Q. You say you saw them after they separated? A. Yes, sir.

Q. How did they go then, did the Dumois go up the river? A. The Dumois stopped.

Q. The Dumois stopped, but she stopped after the collision occurred? A. I don't know when she stopped, but anyhow they both stopped; seemed to be 200 or 300 yards apart—seemed that way. * * *

Q. Was there any distance between the Argo and the Dumois? (Page 152.) A. I told you about 200 or 300 yards.

Q. Which was the farthest up the river? A. The Dumois.

Again, on cross-examination, at page 153:

Q. How long before the Argo came down did you succeed in getting her (the lugger) into the landing? A. We had just made the landing when the Argo blew one whistle—just made the landing.

Q. You were just tying up in there? A. Yes, sir, just making the landing.

Q. The Argo first blew when she was opposite you, didn't she? A. No, she blew before she got to us; she was far above us.

Q. How far up? A. It might be 50 yards—150, in fact—above us. * * * (Page 154.)

Q. When did the Argo whistle the second time? A. A short time after they blew one whistle again.

Q. And she passed you then? A. No, she had not passed us then.

Q. She first blew for the Day Dream 150 yards above you? A. Yes, sir.

Q. And when she got opposite you she blew another whistle again? A. Yes, sir; not quite opposite us yet. * * * (Page 155.)

Q. You have been asked how the pilot house was, etc.; but when you saw the Dumois coming up the bank, on the east bank as you have described, were you in the pilot house at that time? A. No, sir, I was on the main deck.

Q. On which side of the Day Dream were you, on the starboard side or the port side? A. When I heard the two whistles I went to the port side. I could not see from the port side.

Q. You went to the port side and looked down the river? A. Yes, sir.

Q. And it was then you saw the Dumois? A. Yes, sir, I saw the green light.

Q. You say when you heard the Argo whistle and saw her coming down the river, you were in front of the pilot house? A. I was on the starboard side.

Q. And then you looked up the river? A. No, sir, I was looking on the bank when I heard the whistle blow. I looked up. I was just making a landing and my attention was drawn to the whistle.

Q. After you heard the signal from the Dumois to the time the boats came together and then separated as you have described, was there anything to interfere with your seeing them? A. No, sir.

Q. You were standing on the port side looking at them? A. Yes, sir.

And at page 156 said:

Q. When was that, when did you see the green light on the Dumois? A. After she blew the two

whistles; after the Argo blew one whistle and I heard some other boat answer with two whistles, that made me go to the other side of the boat, and then I saw the green light on the boat coming up.

JURISH, who was at the river bank at the time, was asked and said at page 91 as follows:

Q. Were you inside or outside of the Day Dream? A. I was on the outside.

Q. How close were you to the shore? A. I was from the shore—about—the Day Dream was making a landing—I was from the shore—I don't like to make a mistake—about 50 feet, I guess, from the bank. I don t think—I guess 50 or 40 feet from the bank. * * *

Q. Did you notice any steamers coming down the river while you were there? A. Yes, sir, I saw the steamer coming down the river, and he blew one whistle, I think it was for the Day Dream, and the Day Dream answered him by one whistle.

Q. Then did he pass down—in what part of the river was he, could you tell? A. The boat coming down the river.

Q. Yes? A. I wouldn't swear, but I think he was com ng right in the middle of the river, the same as any other steamer would come down. After a little while he blew another whistle again. He was a little more to the east bank, but like any other steamer about in the middle of the river; a little more to the east, maybe—a little more.

Q. Then you say he blew another whistle? A. Yes, sir; then I looked down the river and I saw the steamer coming up in the river, on the east side of the

Mississippi river. I didn't hear any answer from the steamer.

Q. From the steamer going from the east shore? A. Yes, sir; then after a little while I heard four whistles that the steamer was blowing; then she was a good distance out in the river, you know; then I saw the little boat coming down blow four whistles; then after that I saw the little boat hit the big boat on the right side on his bow. * * *

And at page 92 said:

Q. Was the big steamer crossing the river at the time the two boats came together? A. Yes, sir, she was crossing the river.

Q. And the little steamer was coming down the river about the middle? A. Yes, sir.

Again, at page 93, said:

Q. What I ask you is this: While the little steamer was coming down the river on her course, wasn't the big steamer crossing over the river in front of the little steamer? A. In front, yes, sir, sure.

And these witnesses are confirmed by said Nick Theodore as to the whistles blown by the Argo. (Rec., pp. 228-9.)

It is therefore clear from the evidence of both sides that both vessels, after the signals were crossed, proceeded from the places where they respectively were in the river when they came in sight of each other toward the western shore; and it is equally clear from the weight of evidence (and the court finds it to be a fact) that the single blast of the Argo's whistle was the first blown to make the above manœuvre, and that it was given strictly in accordance with law we will show hereafter.

III.

THE NEXT INQUIRY IS, WHERE IN THE RIVER THE STEAMERS WERE WHEN THEY CAME TOGETHER?

CAPTAIN BROWN was asked and said on this subject as follows, at page 50:

Q. In what place in the river were you when the collision? A. We were a little to the westward of the middle.

After the loss of the Argo some movables from her floated and were found on the west shore, and concerning these this witness testified as follows (p. 54):

Q. There was some wreckage came ashore? A. Yes, sir, on the west side.

Q. What did it consist of? A. Stern sheets of the yacht that were aft on the quarter deck, they floated off and went on the west shore; a little raft.

Q. Was there anything in the shape of life preservers? A. Yes, sir, there were some of them further down; we didn't see them picked up; they were picked up by some of the natives.

How for below was that, where you saw it—was it below Lucas canal? A. It was two or three miles.

Q. On the opposite side of the river? A. Yes, sir, on the west shore.

Q. Would that indicate, in your judgment, anything as to where the collision occurred with reference to the river—whether in the middle of the river or on the east or west bank? A. It was certainly on the west bank, for that drift came in on the west shore; it was evidently there.

ORKNEY, the engineer, was asked and said, at page 69:

Q. When you came up, as you have stated, and looked out and saw the Day Dream, or the Day Dream tow—A. I saw a tow. I didn't know what vessel it was.

Q. How for were you from the tow, with reference to the bank of the river—were you close to the side the Day Dream was, or on opposite side, or about the middle? A. I guess we must have been in the middle, because we were so far away. I could make out it was a tow by the lights, but I couldn't see the vessel at all.

And after this witness had described the sinking of the Argo and how her crew had taken to the yawl, was asked, at page 70, and said:

Q. What was the next thing you did? A. We hollered to the vessel (Dumois.) We heard some voices aboard the vessel, although we couldn't see the vessel. I saw we were midway between the two shores and I proposed that we pull ashore; we didn't know which shore to go to, because one was as far as the other; then they commenced to holler on the steamer; she was backing down towards us.

DESEMUS was asked and said page 82:

Q. After you got into the yawl could you see the bank of the river? A. I could see the dark shade to the west bank—to the Algiers bank.

Q. Which bank were you closest to? A. To the Algiers band, the right bank going down, or west shore.

BROADHURST, the fireman, was asked and said, page 89:

Q. While you were in the yawl boat could you see the banks of the river on each side of it? A. I could see the bank of the river before we left the Argo; as

soon as my eyes got rid of the glare of the fire room I could see the banks.

Q. In which part of the river was the Argo then? A. About the center.

GREEN, the steward, was asked and said, at page 101, as follows:

Q. Now, after you got into the yawl boat and the Argo had sunk, could you see the banks of the river then? A. Yes, sir; we were closer to the west bank than to the east bank, and we started for the west bank, it being the closest, to try to get there in the yawl boat.

LINDAUER, one of the newspaper correspondents on the Argo, and who was saved, was asked, at page 159, and said:

Q. When you first came out of the cabin could you have any idea where the Argo was in the river? A. Yes; sir; the first thing I looked for was to see how far we were from the shore, thinking I might have to swim.

Q. What did you do then? A. I saw a woody shore—trees—I couldn't tell which side it was, whether it was the east or west bank, but as near as I could judge—well, between 200 and 250 feet, I should judge, from the shore, was where the Argo was, as near as I could judge.

And at page 162 this witness said:

Q. When you were in the small boat could you see the trees on the bank? A. Yes, sir; I could see the trees.

Q. Could you notice how close you were to those trees then? A. Not even then.

Q. Well, after you got on board the Dumois did you notice how close you were to the shore? A. Yes, sir.

Q. Which shore were you nearest to? A. The woody shore on the west bank of the river.

Q. Then you were nearer to that shore than you were to the east shore? A. Yes, sir; decidedly.

JURISH, who was on the east bank and who would have the least opportunity to judge exactly where the

collision occurred, was asked at page 92, and said as follows :

Q. About what part of the river were they when they came together? A. They were about, right a little below where I was.

Q. No, no, but I mean with reference to the bank —where they in the middle of the river, or near the east bank or near the —— A. They were in the middle of the river ; a little more, maybe, to the east side.

DEEDES, who was also a witness of the collision from the east shore, was asked, at page 151, and said as follows :

Q. Well, then, the point of the collision would be right opposite where the Day Dream lay on the shore? A. Yes, sir.

Q. A little westward of the middle of the river? A. Something like that ; in the middle of the river, or a little more to that side.

Q. A little more to the west side? A. Yes, sir.

The foregoing evidence as to the place in the river where the collision occured is somewhat at variance, but all is to the effect that it occurred between the middle of the river and its western shore ; but that Captain Brown, Green, Desemus and Lindauer are correct in their statements that the point of collision was well to the west of the middle of the river is settled beyond all dispute by the finding of the wreck of the Argo, by NORBERT BURAS, who, after stating how he found the same, describes its location, at page 110 of his evidence, where he was asked and stated as follows :

Q. How far below the canal is the place where this wreck lays ? A. It is about four arpents, more or less

Q. Four arpents, more or less, below the canal? A. Yes, sir.

Q. Near which bank of the river ? It is nearer the right bank going down, or the left bank? A. It is on the right bank going down.

Q. How far from the bank of the river is the wreck? A. About 500 feet, more or less, from the right bank.

Claimant, realizing the force of the above argued in the Court of Appeals, that the presence of said wreck 500 feet from the western shore was accounted for by the evidence of Orkney, the Argo's engineer (which it was contended, was to the effect that *immediately* after the collision the Argo's engines, which had been stopped by the collision, as well as her headway) were started, when she was heading toward that bank, and that this would carry her from the contended point of collision in the middle of the river where she sank, but there is no evidence to support this contention.

Orkney's evidence shows, that after the collision had taken place, after the Dumois had passed along the front of the bow of the Argo (which was knocked in, p. 242) and gone out of sight, and after the yawl of the Argo had been lowered into the water and while the crew were getting into it preparing to leave the Argo to save their lives, and when she was sinking rapidly, that it was noticed that her head was pointing to the west shore, when Captain Brown thought she might possibly be beached, that then Orkney rushed below just prior to the yawls shoving off, and started her engines, and then she was sinking so rapidly by her head that her crank shaft was turning in the water then in her hull, and when her stern was already lifted out of water, and her propeller was revolving in the air and as a consequence not moving the Argo at all. The accuracy of this statement, and the error on any contention to the contrary can best be demonstrated by giving the evidence of Orkney, as taken from his own lips by the stenographer as it appears on pages 75 to 77, as follows:

Q. The Argo struck the Dumois at right angles?
A. It looked like it.

Q. Did the shock stop the engines of the Argo?
A. Yes, sir.

Q. Did you go back and start the engines again?
A. Yes, sir, the second time.

Q. How long did her engines work after you struck?
A. The engines were working after we left the boat, her stern was out of water and her wheel was revolving.

Q. When did her stern come out first? A. When we were lowering the boat.

Q. How far were you from the Dumois? A. I couldn't see her then, she had gone.

Q. The Argo continued right down stream? A. We couldn't tell where she was going, she was pointed towards the bank when I went down to start her up the second time.

Q. She didn't stop from the time until you got off of her? A. No, sir, she was still going (not ahead as was contended, but) like a hog rooting (which is anything but going ahead).

Q. Can you tell how long it was from the time of the collision to the time you cast off the line of this boat with the men in it? A. I should judge it was about three minutes.

* * * * * * * * * * * *

Q. Mr. Orkney, have you already stated in this case that you started the engines of the Argo before you left her? A. Yes, sir.

Q. Please state when it was—at what time that you started the engines, and if you know, in which way the Argo was heading at the time you started them? A. It was shortly before I got into the boat.

Q. Had the boat already been launched? A. The boat was in the water, they were holding on to the painter, some were getting into the boat at the time I ran down and started her up.

Q. Then they were in the boat? A. Some were in the boat and some were on deck.

Q. They were on deck ready to get in? A. Yes, sir.

Q. And then it was that you started the engines? A. Yes, sir, after I passed the painter to the captain, the captain was in the boat and I passed the painter to him and went below and started the engines up.

Q. How did you happen to go and start them up? A. I saw her heading toward the shore and I thought, with the suggestion that the captain made, that we might

beach her and save her, but we didn't know at that time that she was so badly damaged.

Q. How long was it prior to your shoving off from the boat? A. We were in the boat three minutes from the time we hit, it must have been two minutes after we struck that I started her up again.

Q. It was just prior to your shoving off from her? A. Yes, sir, I went down and started her up, and when I started her I found that the crank was turning in the water and I saw then that the boat was going down very rapidly and we had just time to get away from her.

And this is fully supported by Lindauer at page 161 :

Q. How long did the Argo float after you got into the yawl boat? A. After I got into the yawl boat I don't think it could have floated over a minute or a minute and a half.

Q. You had only got away when she went down? A. Yes, sir, just barely got away from her. The way I noticed that the wheel of the Argo was turning, was that someone called out, look, you will go under her counter, and they took an oar and shoved the stern of the yawl boat from the stern of the Argo, just then the stern of the Argo lifted in the air.

* * * * * * * * * *

Q. At the time that you shoved off from the Argo, was the Argo making headway through the water at all or just floating? A. That even I don't know, I know her wheel was in motion.

Q. The wheel was under the water? A. When I first noticed her wheel, but after we got a distance away from her, say probably 15 or 20 feet I could see the wheel in the air and the revolution was so much faster than it had been under water I thought she was fighting the air.

And the evidence of the claimants themselves shows that after the collision the Argo never moved from the place where the collision occurred, except floating down stream. So say both Pilot Lumbard and Mate Sabitsin. At page 245 LUMBARD was asked by claimants' proctor and stated as follows :

Q. Which way did the Argo go after she struck the Dumois? A. She drifted very slowly along our side. About the time she got under our stern our headway was fully stopped and she was right there within a—well, a ship's length, I suppose, under our stern.

Q. Did she have any headway on, did you notice? A. When she sunk?

Q. Yes. A. No, sir.

Q. Do you know which way she was pointed? A. She was pointing a little to the west shore.

Q. Up stream? A. Yes, sir, up stream.

And SABITSIN, the mate, at pages 270 and 271, said:

Q. She went down just about where the collision occured in the river, only a little further down stream? A. She drifted below that.

Q. But she didn't go either to the east or the west bank? A. I couldn't tell.

Q. You saw her lights? A. Yes, sir, I saw her green lights.

Q. Did that green light that you saw, did it go after the collision, did it pass to the eastward or the westward, or remain in about the same place? A. As I saw it, it remained in about the same place.

It is therefore, clear from the evidence of both sides —in fact it is one of the things settled in this case (and settled notwithstanding the evidence of the master of the Dnmois in direct opposition to that of his mate and pilot, who on coming on deck as the collision occurred, said p. 211, "then I saw the yacht, she drove alongside of us and then went full speed to the west bank") that the Argo sank at a point in the river neither to the eastward or westward of where the collision occurred.

And this most important fact the court fails to notice or in any manner heed, as well as it does the further fact, that after the signals were crossed and when the danger was imminent the man steering the Dumois was suddenly taken from the wheel and the man Larsen, who did not know the meaning of a crossed signal, was put in his place.

And that the wreck as found by Buras is the wreck of the *Argo* is established by Captain Brown's identification of the parts of the same which Buras brought up with his grappling iron, and which are in evidence. See Brown's evidence taken May 24, 1897 (p. 114); also that of Springer, taken in open court on December 16, 1897 (p. 180).

This location of the wreck is not only confirmatory of the place where the collision took place, but it is also strongly confirmatory of the fact that the Argo was in the middle of the river when she first saw and first whistled to the Dumois with one blast of her whistle, for there was not sufficient time after her first signal was crossed and the Argo's second signal blown and her helm ported, for her to have gone far before the vessels struck, whereby the Argo's forward motion was entirely stopped, and from that time to the sinking she obtained no headway to the western bank.

Having established, as we believe, that when the vessels first came in sight of each other, the Argo was in the center of the stream descending, and that the Dumois was on the eastern shore about 400 or 500 feet from the bank (and the mate on watch says she was 500 feet), coming up the river and a mile or more distant from each other; and having further established, as we believe, that the Argo, after having first blown one blast of her whistle as a passing signal to the tug Day Dream landed at the eastern shore, and received an answer of one signal from said Day Dream, that immediately thereafter she blew a passing signal of one blast of her whistle to the steamship Dumois, and that she received from said Dumois a cross signal of two blasts of said Dumois' whistle and that thereupon said Argo replied with another single blast of her whistle and at once ported her helm to go to her starboard, while said Dumois, immediately after crossing the signal of said Argo, changed her course and shot across the river in front of the Argo and thereby caused the collision, we will undertake to show which vessel was in fault in causing said collision.

And as preliminary to this question we will show that the course pursued by the Argo in the middle of the river was under ordinary circumstances the proper course for a descending boat. So says Lumbard, the pilot of the Dumois, at page 244, where he was asked and said as follows:

Q. Which side of the river is it customary for the descending boat to take? A. They take the middle of the river.

Q. Why is that? A. Because there is more current there.

And at page 48 Captain Brown, of the Argo, was asked and said:

Q. Whereabouts were you in the river when you first noticed the steamer which came in collision with you —where was your boat, in what part of the river? A. I was in the middle of the river.

Q. You were going down stream? A. Yes, sir.

This he repeats at page 50, and on page 57 he says he was on his right course (the middle of the river), referring to the middle of the river.

And Captain Jurish, at page 91, says the boat coming down the river "was coming right in the middle of the river, the way other steamers would come down. He was a little more to the east, but like any other steamer about in the middle of the river; a little more to the east, maybe—a little more."

And there was no place for an ascending steamer to cross where this collision occurred, and especially not when the wind blows as it did that night. (Lumbard, p. 244.)

And there is no evidence to the contrary, and we therefore say that according to custom the Argo was in her proper place. The only suggestion to the contrary is to be found in the latter part of the third article of the Dumois answer to the libel, but in the amended petition praying the benefit of the limited liability acts of Congress filed by the claimant of the Dumois the middle of the stream is declared to be the proper place for a descending steamer, but we apprehend that notwithstanding the

above evidence, and the last judicial averment by the claimant on this subject he will again contend her proper place was on the west shore of the river. This contention is evidently based on the 25th article of act of August 19, 1890, to adopt regulations for preventing collisions at sea, as amended by the acts of May 28, 1894, and August 13, 1894, and June 19, 1896, and proclaimed by the President of the United States to take effect July, 1897, but this act has no application whatever, for the date of its taking effect was July 1, 1897, while the collision took place before that day, to-wit: on January 28, 1897.

Nor does the act of March 3, 1885, or any of its provisions destroy or interfere with the usual custom of the descending vessel taking her course in the middle of the river, or attempt to fix the proper position of the descending vessel, for it has no application to the facts of this case. Its last clause exempts its operation from the navigation "within the harbors, lakes and inland waters of the United States.

It is true it is contended there were no such laws relating "to the harbors, lakes and inland waters of the United States," but unfortunately, for that contention and the decision in the 44 U. S. Ap., 353, directly the opposite has been decided by the Supreme Court of the United States in the case of the Delaware, 161 U. S., p. 459, decided March 2, 1896. At page 463 the court says:

"The International Code for preventing collisions was first adopted by act of April 29, 1864, incorporated into the Revised Statutes as section 4233, and was made applicable generally to the 'vessels of the navy and of the merchant marine of the United States.' This code remained substantially unaffected by congressional legislation until March 3, 1885, when the Revised International Regulations for preventing collisions at see were adopted by act of Congress, and made applicable to 'the navigation of all public and private vessels of the United States upon the high seas and in all coast waters of the United States.' By section 2, all laws inconsistent with

these rules were repealed, except as to the navigation of such vessels within the harbors, lakes and inland waters, the original code of 1864 still remains in force, explained and supplemented by the rules of the Supervising Inspectors. The Act of 1885 did not attempt to draw the line between the high seas and the coast waters of the United States, on one hand, and the harbors and inland waters, on the other. Nor was it possible by any general rule of legislation to do so. We are of opinion, however, that the dredged entrance to a harbor is as much the inland waters of the United States within the meaning of this act as the harbor within the entrance, and that the real point aimed at by Congress was to allow the original code to remain in force so far as it applied to pilotage waters, or waters within which it is necessary for safe navigation to have a local pilot."

Again, at page 464, the court said:

"The recent legislation has not only established the proper practice for the future, but has explained what must have been the intention of Congress in passing the original act. By act of February 19, 1895, c. 102, 28 Stat., 672, to adopt special rules for navigation of harbors, rivers and inland waters of the United States, these waters are declared to be still subject to the provisions of Rev. Stat., Sec. 4233 (the original code) and to the regulation of the Supervising Inspectors."

This act will be more fully noticed hereafter, but the above is sufficient to show that the article in neither the act of 1885, or in that of 1890, with its supplements, has any application to this case as to the path of the descending vessel, but that the custom of the descending vessel pursuing the middle of the river is in full force in this case.

In further pursuing this question of fault, it will be necessary to determine, first, what lights each vessel should have carried; second, what are steering rules that should govern vessels in passing each other on the Mississippi river in the night time at the point in the river where this collision occurred; and, third, what signals said vessels should have given each other.

AS TO THE RULES OF NAVIGATION.

And here it is proper to note that the rules prescribed by the Board of Supervising Inspectors of Steam Vessels, to be found at page 82 of said rules (pamphlet of January, 1896), have no application to the facts of the collision in this case, which occurred 80 miles below the lower limits of the City of New Orleans, for it is perfectly clear from a mere inspection of Rule XIV of said rules, that said rules have no application whatever in the present case. Said rule declares:

"The line dividing jurisdiction between pilot rules on western rivers and harbors, rivers and inland waters at New Orleans shall be the lower limits of the city."

Nor do the Pilot Rules prescribed by said Board of the Atlantic and Pacific Coast Inland Waters control, for the preamble to said rules expressly declares the rivers flowing into the Gulf of Mexico are exempted from the operation thereof. See page 73, of said rules. And the last clause of Rule IX of the rules last named, still further emphasises the fact that the "Pilot Rules for Western Rivers" does not apply, for, it declares:

"The line dividing jurisdiction between pilot rules on western rivers and harbors, rivers and inland waters at New Orleans, shall be the lower limits of the city."

But it does not follow that the part of the Mississippi river from the lower limits of the City of New Orleans to the Gulf of Mexico, is exempt from the operation of any rules whatever, for this case had been provided for by Congress, by act approved February 19, 1895, the first section of which declares, in substance, that on and after March 1, 1895, the provisions of Sections 4233, 4412 and 4413, of the U. S. Revised Statutes and regulations pursuant thereto should be "followed on the harbors, rivers and inland waters of the United States," and the provisions of said sections, and regulations pursuant thereto, were thereby declared special rules duly made by local authority relative to the navigation of harbors, rivers and inland waters as provided for in

Article 30 of the Act of August 19, 1890, entitled, "An act to adopt regulations for preventing collisions at sea."

Under the second section of this act of February 19, 1895, the Secretary of the Treasury was directed to designate and define the lines dividing the high seas from rivers, harbors and inland waters:

"New Orleans harbor and the delta of the Mississippi river, South Pass East Jetty light N. ½ East to Pass a Loutee light, thence N. to Errol Island and from South Pass East Jetty light W. ⅞ S. to the Southwest light, thence N. to shore."

All above this line is "rivers, harbors and inland waters" up to the lower limits of the City of New Orleans.

And said Section 4233, which prescribes the rules which are to govern on said harbors, rivers and inland waters, is as follows:

"Sec. 4233. The following rules for preventing collisions on waters, shall be followed in navigating of vessels of the navy and in the merchant marine of the United States."

And herein, first as to

LIGHTS.

Rule 3. All ocean-going steamers, shall, when under way, carry:

(A.) At foremast head, a bright white light, visible on a dark clear night 5 miles, etc.

(B.) On the starboard side, a green light, visible on dark clear nights at least 2 miles, etc.

(C.) On the port side, a red right, visible on a clear night at least 2 miles, etc.

The green and red lights are to be fitted with inboard screens, projecting three feet forward from the lights so as to prevent them from being seen across the bow.

Rule 5. All steam vessels, other than ocean-going steamers, and steamers carrying sail, shall, when under way, carry the starboard and port side lights of the same

character and construction, and in the same place as are prescribed for side lights by Rule 3, except in case of Rule 6.

Said Rule 6 relates to river steamers (steamboats) navigating waters flowing into the Gulf of Mexico, etc., and provide for signal lights to be carried on the outside of each of the vessel's smokestaks, and by the following rule:

"Rule 7. All coasting steam vessels, other than ferryboats and vessels otherwise expressly provided for, navigating the bays, lakes, rivers or other inland waters of the United States, except those mentioned in Rule 6, shall carry the red and green lights as prescribed for ocean-going steamers; and, in addition thereto, a central range of two white lights, the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel. The head light shall be so constructed as to show a good light through twenty points of the compass, namely: from right ahead to two points abaft the beam on either side of the vessel; and the after light so as to show all around the horizon."

Such are the provisions of law as to the lights which a vessel of the kind of the Argo should carry, but it is the colored lights alone that are to control the pilots, and hence the importance of their construction and location, which is laid down at page 81, of said regulations, as follows:

"The manner of fixing the colored lights should be particularly attended to. They will require to be fitted each with a screen of wood or canvas, on the inboard side, and close to the light, in order to prevent both being seen at the same moment from any direction but that of right ahead (not 4 points, page 251, or 4 inches, on the surface of the compass, without telling how big the compas is, as Pilot Lumbard of the Dumois, page 252, would have us believe) to two points abaft the beam.

"This is important, for without the screens any plan of bow lights would be ineffectual as a means of indicating the direction of steering. This would be readily understood by reference to the preceding illustrations,

where it will appear evident in any situation in which two wessels may approach each other in the dark, the colored lights will instantly indicate to both the relative course of each; that is, each will know whether the other is approaching directly or crossing the bows either to the starboard or port.

"This intimation, with the signals by whistle, as provided, is all that is required to enable vessels to pass each other in the darkest night with almost equal safety as in broad day."

And herein as to the rules for:

STEERING AND SAILING SAID VESSELS,

which is Rule 18, and is as follows:

"Rule 18. If two vessels under steam are meeting end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other."

And herein as to the directions that are to control pilots as to the

SIGNALS OR WHISTLES TO BE GIVEN.

Among the "regulations pursuant" to the foregoing sections—and especially Section 4413 – of the Revised Statutes of the United States are those to be found on pages 78, 79, 80 and 81 of said regulations of "Supervising Inspectors of Steam Vessels" where various diagrams and illustrations with directions as to what shall be done in each case, including the whistles that are to be blown.

The first situation with diagram, is when the colored lights are visible to each, which indicates the approach head and head (and by note to be found at page 73, it is stated that "in the night steamers will be considered as meeting 'head and head' so long as both the colored lights are in view of the other").

"In this situation it is a standing rule that both shall put their helms to port and pass to the right, each having previously given one blast of the steam whistle."

This is the situation of the vessels in this case as detailed by the Dumois.

The second situation, with a diagram, is where the green light is visible on each steamer (which, according to the evidence of both sides, is not the present suit, at least not until after the signal had been given. They—the vessels—are, therefore, passing to starboard, which is rulable in this situation, each pilot having previously signified his intention by two blasts of the steam whistle.

The third situation, with diagram, is where the red light only will be visible (which is the situation described by libellant's witnesses) to the pilot of each steamer. Both vessels are evidently passing to port, which is rulable in this situation, each pilot having previously signified his intention by one blast of the steam whistle.

The fourth situation, with diagram, is where the steamers are approaching each other on oblique courses and the green light of the descending steamer would be visible to the ascending steamer, and the red light of the ascending steamer would be visible to the descending steamer. This is not the present case.

The fifth situation, with diagram, is where the green of the ascending boat is visible to the descending boat, and where the red light of the descending boat is visible to the ascending boat.

This is the situation in this case, *after* the Dumois swung out and attempted to pass in front of the Argo. This situation the regulation (pages 79 and 80) says requires great caution, and that the ascending boat should put her helm to port and pass astern of the descending boat, while the descending boat should continue her course, or port her helm if necessary to avoid collision.

It will be observed that in the first situation (the one claimed by the Dumois) and in the fourth and fifth, the language of the rules that are to govern the action of the pilot, is different from the other situations, and in this. In the first situation the rule is said to be a "standing" one—that is invariable, not to be departed from—and in the fourth and fifth situations the rule is that the vessel that has the other on her starboard bow "should put his

helm to port and pass astern" of the other, while the one that has the other on her port bow "should continue on her course or port his helm if necessary. In the other situations the action of the pilot there described is merely said to be "rulable," that is, permitted by the rule. In the one case the direction is peremptory, while in the other it is discretionary.

The substance of the rules is well summed up in the following ditty, which is well known to every experienced seaman:

> "When both side lights you see ahead
> Port your helm and show your red,
> Green to green, and red to red,
> Perfect safety, go ahead."

APPLICATION OF THE ABOVE RULES TO THE FACTS OF THIS CASE.

In the first place it is proper to observe that neither party was in fault as far as their lights were concerned. It is true that in the answer of the Dumois, as well as in the petition claiming the benefit of the Limited Liability Act, it is stated the head light of the Argo (called the masthead light) was too low, and only a few feet above the plane of the red and green lights, and hence was confusing, but there is no complaint that the lights were not burning brightly, that they were not seen at a long distance off, or that any one was mislead thereby, and even if there was, said lights were located strictly according to law. Captain Brown and his lookout saw the lights on the Dumois about three-fourths of a mile or more distant, while the mate of the Dumois, who was on the bridge with the pilot, as also the man at the wheel, saw the lights of the Argo half a mile or more distant. And certain it is that the Argo had such lights as the rules prescribe even though the court intimates the contrary (p. 337). Her inspection papers so declare. The only complaint is, that the masthead light (as it is called by the Dumois) was but a short distance above the signal lights, but under the rules, she was not required to carry

any masthead light at all. The confusion in the mind of the claimant of the Dumois (if there is any) is based upon a misunderstanding of the Argo and the rule governing her lights and the place where they should be carried. The Argo was not an ocean-going steamer, or a steamer carrying sail—such as is provided for in said Rule 2 of Section 4233 of the U. S. Rev. Stat., and was therefore not required to carry a masthead light, but was a steam vessel other than ocean-going and did not carry sail, but was provided for in Rule 5, and was required to carry the red and green side lights of Rule 2, and being licensed for the coasting trade, and permitted by her inspection papers to navigate "Lakes, bays, sounds and rivers," she came under Rule 7, and was required to carry the red and green lights prescribed for ocean-going steamers, and in addition thereto a central range of two lights; the after light being carried at an elevation of at least 15 feet above the light at the head of the vessel (not the masthead light), the head light to be so constructed as to show a good light through 20 points of the compass, from right ahead to two points abaft the beam on either side (the picture of the Argo shows this light with its screen), and the after light to show all around the horizon. The side lights and the after light are not complained of, but only the improperly called masthead light, which was on the forward part of the pilot house and was proper, and not in violation of any rule.

But the highness or the lowness of the head, or white light, on the Argo can in no sense be an excuse for the pilot of the Dumois in not seeing the Argo before he even did, nor for his conduct in crossing the river in front of the Argo, for it is the red and green lights alone that are to control vessels in passing each other, as the regulations hereinbefore given declare, and concerning which the Supreme Court of the United States, in BELDEN CHASE, 150 U. S., at page 693, said:

"The importance attributed to the red and green lights is apparent through these rules (of navigation), and in the rules and regulations of the board of supervising inspectors. After diagrams are given in illustra-

tion of the working of the system of such lights, it is here said that by reference to them it will appear evident that in any situation in which two vessels may approach each other in the dark, the colored lights will instantly indicate to both the relative course of each; that is, each will know whether the other is approaching directly or crossing the bows either to starbord or port.' This intimation, with the signals of the whistle, as provided, is all that is required to enable vessels to pass each other in the darkest night with almost equal safety as in broad day."

Even the absence of any light, if it does not cause or contribute to the collision, does not render such vessel liable for the collision. 3 Fed. Rep., 870; 9 Fed. Rep., 666. and the same is true of the absence of a lookout, 16 Wall., 334; 23 Wall, 69; 96 U. S., 600; 17 Wall., 243; 2 Wod.. 258.

And the same law applies to the statement of the court made after it had alread decided the case, "that it was hardly necessary to add that, at the time she was short of her regulation crew", for the evidence shows the only men short, were two deck hands, whose places were filled by Hester and Blesine, (both competent, pp. 169 and 170), and if said "deckhands" had been on board they would, at the time, have been below and asleep, pp. 65 and 66. There was nothing unusual, and certainly nothing wrong in having the representatives of the charterer become part of the crew, and there can, in this case, be no complaint of the fact, because it did not contribute to the collision, for the Dumois lights were seen by the lookout and master of the Argo (who under Sec. 4443 of the Rev. Stat. was also her pilot) three quarters of a mile distant.

The red and green lights of the Argo having been seen at least half a mile or more distant, what under the circumstances was the duty of the Dumois?

We think we have demonstrated that the Argo was in mid-stream and the Dumois toward the east shore of the river. In that event, it is plain under the rules that it was the duty of each vessel to sound one blast of their

whistle and pass to the right of each other, and hence the Dumois in attempting to pass on the opposite side was in grave fault and solely responsible for the collision.

But suppose that we have not shown when the boats first saw each other they were as above stated, and say that the evidence of the master at the wheel and his lookout on watch, that of his engineer and steward, and the evidence of Jurish and Deedes who witnessed the collision from the river bank, the finding of the wreck of the Argo, which never changed her position from east to west from the time the vessels struck until she sank to the bottom 500 feet from the west shore where it now lies, say all these facts are to count for nothing, the question then arises where were they? The mate of the Dumois says she was 500 feet from the eastern bank, while the evidence of those connected with the luggers shows they (the luggers) did not extend more than 40 or 50 feet from the eastern shore, to which they were tied, and this would leave 450 feet clear between the Dumois and the luggers, or more than twice the length of the Dumois, and more than ten times her width of beam. Now, the mate and pilot of the Dumois testify they saw both signal lights of the Argo (which the regulations say is "head and head"), and that she was dead ahead, or about dead ahead, and half a mile distant. What under the circumstances was it her duty to do?

Rule 18, above given, answers this in the following language:

"Rule 18. If two vessels under steam are meeting end on, or nearly end on, so as to involve the risk of collision, the helms of both shall be put to port" (the very thing which the pilot of the Argo did, while the pilot of the Dumois did the very opposite) "so that each may pass on the port side of the other."

And the diagram and illustration given by said Board of Inspectors of Steam Vessels will demonstrate what the result would have been had this rule not been violated by the Dumois. Who then was in fault, according to the location and position of the vessels as given by the Dumois? Captain Brown says he blew the signal

required under this rule, and so say his lookout, engineer and steward, and so say all the witnesses who were spectators of the collision on the shore—Deedes, Jurish, and even this old man Theodore. And this the court finds to have been the fact. The Argo, in all respects, observed this "standing rule," blew the whistle required thereby, and ported her helm as required, and was therefore not in fault.

It is true the pilot of the Dumois says there was but a ship's length between her and the eastern shore, and not sufficient room for him to pass the Argo on his left, but if that were true it would not justify his action in thrusting his ship across the course and bow of the Argo. But is it true? His mate, who knew the length of the ship better than the pilot, says there was 500 feet between her and the bank, and this evidence (and by an officer of the ship) we prefer to that of a man who pretends to be a skillful pilot, and who only knows a point on a compass, as an inch on its circumference, and cannot tell how many degrees there are in a point, and who says that vessels meeting each other would have to change their courses 4 points (45 degrees) in order that one of the signal lights might disappear.

It is also true that the witnesses from the Dumois swear they did not hear the Argo whistle before the Dumois blew her whistle, but if they did not, it was because they did not attend to their business, for not only was the signal given by the Argo, but immediately preceding it there was a like signal blown by the Argo to the tug Day Dream, and properly answered, and at a time when the latter was nearer the Dumois than when the Argo blew, and yet none of these whistles (which were certainly sounded, were heard on the Dumois, and if not why not? Simply, because the parties on the Dumois who should have heard them—the pilot and mate—on this cold and freezing night were under cover where they could not be heard. The parties who probably did hear them (the first man at the wheel—and strange to say there was a change of the man at the wheel after the collision became imminent—and the

lookout and an another sailor man on the bow of the Dumois at the time) have not been produced or examined by the Dumois. They were present and eye-witnesses to the whole affair, and, in fact, participants therein. Why have they not been produced and examined?

Nor can the Argo be found in fault for being, as the mate of the Dumois claims (and which we deny), 500 feet from the eastern bank, and especially with the wind blowing strongly from that bank, where she would find the most quiet water. The only law that controled her was said Rule 18 of Rev. Stat. of the U. S. (and not the Pilot Rules of the Western Waters), under which either wessel had the right to whistle first, whereby the one so doing became the preferred vessel, when, as said rule of the statute declares, "the helms of both shall be put to port so that each may pass on the port side of the other." If the Dumois, 500 feet from the eastern bank, had not seen the signal lights of the Argo as soon as she did and recognized her as an approaching steamer half mile distant, with plenty of time to port her helm and space within which to make the manœuvre, had kept her course—when no collision would have happened—the custom, under ordinary circumstances requiring the descending boat in the middle of the river might count for something in this case, but the Dumois not being deceived, and the Argo being seen in ample time for both vessels to make the manœuvre required by the statute the one vessel that thus glaringly and openly violates the law is solely in fault, no matter what the custom is. The law controls in this case and not the custom. In other words, the Argo's not being (if such is the fact) in the place in the river where the custom required, where she under ordinary circumstances should be, but being seen by the Dumois dead ahead, and in ample time, and the Argo having (as the evidence shows and as the court finds) given the first and proper signal and helm, the Dumois after seeing said Argo and giving an improper signal and helm, whereby the collision was occasioned, the Dumois alone is responsible, for the primary cause

of the collision was not the fact that the Argo was 500 feet from the eastern shore when recognized as a descending steamer, but the Dumois' open violation of a positive act of Congress, forbidding her to do the very thing she did do, and for which not even any custom would excuse her.

Nor can it be said the Argo was in fault because of the speed she was going. The river was about half a mile wide, the night was clear, there was no crowd of vessels, and the errand on which she was proceeding was quasi public in its nature, to-wit: to carry newspaper reporters to meet a Congressional Committee to the jetties, who had already preceded the Argo on the steamship Whitney, and whom it was necessary to overtake to secure their proceedings and report the same for the public press.

But apart from the nature of her errand and the necessity for the speed with which she was proceeding there was no restraint by law or otherwise upon her rate of speed, because, as before stated, the night was clear, there was no crowd of vessels, and the water space was ample.

The only circumstances under which a steam vessel is required to slacken her speed, or stop, or back, is when she is approaching another vessel and there is risk of a collision, or where there is a fog. This is stated by the Rule 21 as follows :

"Rule 21. Every vessel approaching another vessel, so as to involve the risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam vessel shall, when in a fog, go at moderate speed."

But apart from its provision in reference to fog, this rule contemplates the case of a steam vessel approaching another vessel on their regular courses and not the case of one vessel suddenly throwing herself across the pathway or course of another vessel. In other words it is a direction to a vessel approaching another vessel where the courses are converging, and does not contemplate vessels approaching each other on parallel courses, for here there is no "risk of collision" involved. This is

shown by the fourth and fifth illustrations and diagrams on pages 79 and 80 of said regulations.

The fallacy of the contrary will appear by taking the case of two carriages approaching each other from opposite directien on the same highway. Each is in its proper place for passing and each is going rapidly, when suddenly the one shoots across the road right in front of the other approaching from the opposite direction and a collision occurs. Surely no sane person would contend that the latter was in fault for not slackening its speed or stopping, or backing, before the collision occurred, and especially when there was nothing to indicate that such an insane move would be made before it actually was made. The rule will be best illustrated by reference to carriages approaching on converging highways, when it will be the duty to slacken, and perhaps to stop and back, because here there is risk of collision.

This matter has been frequently passed upon in this country and in England, and many of the cases are collected by Circuit Judge Emmons in the case of The Free State, 1 Brown's Admiralty Rep., 251, and among those given are the following:

"The Rob Roy ran down the Unicorn, going at full "speed until she was in such close proximity that the "attempt to stop was useless. The green light of the "Unicorn being extinguished, and the red light hid on account of her course, she was mistaken for a small craft. The Rob Roy ported, as she should have done had the "vessel been what the light indicated. Dr. Lushington "excused the Rob Roy for not slowing speed, becanse he "says the lights which the Unicorn displayed indicated it "was safe to do so."

In this case it is further shown that all of the rules above referred to are but declaratory of what the law was before said rules were adopted, and at page 262 said:

"The law, before the statute, was that declared by it; and therefore the rule as to slowing would be the same under the one as the other. Ought she to have slackened her speed sooner than she did? Whether the light she saw was on a steamer or on a sailing vessel,

no duty to slacken speed or to change the course of the Scotia arose until there was reason to apprehend a collision. The suggestion that it was her immediate duty to slacken speed when she saw the light, assumes what at first instance is not to be assumed. If she saw the light and observed it diligently, without having reasonable ground for apprehending a collision, no duty to slacken speed, or even change her course, was created."

And the judge further observes:

"It was not intended to change the rule of the road so far as any duty in this case was concerned, by the adoption of these articles. The regulations they establish are as old as steam and modern improvements in navigation."

And still further said:

"That the so-called 'Golden Rule' of porting and passing to the right was established before the Act of 1864; see St. John v. Paine, 10 How., 583; the Nimrod, 15 Jurist, 1201; Story on Bailm, 611; The Duke of Sussex, 1 Wm. Rob., 274; The Rose lays down the rule stringently, 1 Pars. Adm., 569, and note 4; and fully affirming the rule, see New York Co. v. Navigation Co., 22, How., 461, citing some of the leading English and American judgments. The Supreme Court says the rule is well established."

And at page 264, at the bottom, the court further said:

"A very large majority of all the decisions in reference to collisions, both English and American, assumed as well settled this principle, that actual perceived danger alone demands the duty of slacking speed."

This case of The Free State went to the United States Supreme Court, where the decision of the Circuit Court was affirmed and the above doctrine reiterated in the 91 U. S. R.. p. 200, where that court said at p. 206:

"If two steamers are meeting each other end on or nearly so where there is plenty of sea room, and at considerable distance from each other, it is not the duty of either to stop, reverse, or to slacken. The duty of each is to pass on the port side, and the rate of speed is not an

element in the case. The risk of collision is not present under such circumstances."

Rule 18, as to steam vessels meeting end on or nearly so, so as to involve risk of collision, is the same as Rule 16, as to sailing vessels meeting end on or nearly so, and the decisions in this country and in England are numerous, that when the vessel not observing this rule is condemned without regard to the one porting, not having stopped before the collision occurred. Two English cases are given by the court in The Free State, 1 Brown's Admiralty, page 265, as follows:

"The Cognac (Holt's Rule of the Road, 133). Two vessels approached end on. The one followed the rule and ported, but the other suddenly starboarded, and brought about the collision. Dr. Lushington pronounced against the offending ship, although the other was proceeding under full steam; no criticism whatever was made upon the rate of speed.

"The Concordia (Holt, 142). So far as this question is concerned, the facts are substantially the same as those in the Cognac. For a faulty starboard movement, the Concordia was condemned for the whole damage, although the other vessel was proceeding with rapidity up to the moment of the collision."

On this subject of a faulty starboarding of the helm, see also The Maggie J. Smith 123 U. S. R., p. 353, and the cases of the United States Supreme Court there summarized as follows: The Nichols, 7 Wall., 656; The Dexter, 23 Wall, p. 69, and the Annie Lindsly, 104 U. S., p. 185. In the case of the Maggie J. Smith, at page 355, the court said:

"Nor is there anything in the position that, when two vessels are approaching in opposite directions so as to involve risk of collision, and one of them violates the rule of navigation in directing its helm, and the other vessel sees it, she will be in fault if she does not also turn her helm so as to avoid the consequence of such departure from the rule."

Again, take the positions of the vessels after they had changed their courses—that is after the Argo ported

and gone to starboard, and the Dumois had starboarded and gone to port across the path of the Argo, what was then the duty of the Argo and what that of the Dumois? The regulations and illustrations of the Board of Supervising Inspectors, at pages 79 and 80 answer, that it was the duty of the Dumois to put her helm to port (not to starboard as she did) and pass astern of the Argo (directly the contrary of what she did do) while it was the duty of the Argo to continue on her course or port her helm if necessary to avoid the collision, both of which she did do.

It is therefore clear Captain Brown, in all respects, observed Rule 18 of Sec. 4233 of the Revised Statutes when he blew one blast of his whistle and ported his helm to pass to his starboard, and that Lumbard, the pilot of the Dumois, violated this law when he blew two whistles, starboarded his helm and put his vessel across the path of the Argo, and before she can excuse herself she must show that this breach of the law did not and could not have caused the collision. This was directly declared in Belden vs. Chase, 150 U. S. R., p. 699, as follows:

"And while under Rule 24, in construing and obeying the rules, due regard must be had to all dangers of navigation and to any special circumstances which must exist in any particular case, rendering a departure from them necessary in order to avoid immediate danger, the burden of proof lies on the party alleging that he was justified in such departure. The Agra, L. R. 1 C., 501; The General Lee, Irish L. R. 3 Eq., 155. Indeed, in the Agra, it was ruled that not only must it be shown that the departure at the time it took place was necessary in order to avoid immediate danger, but also that the course adopted was reasonably calculated to avoid that danger. *And it is the established rule in this court that when a vessel has committed a positive breach of statute, she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so.* The Pennsylvania, 19 Wall., 126, 136; Richelieu Navigation Co. vs. Boston Insurance Co., 136 U. S., 408, 422."

See also The Britannia, 155 U. S., page 143, where the above doctrine is declared and the latter part of the above paragraph is quoted in full. See also The Victory vs. The Plymothian, 168 U. S., p. 428.

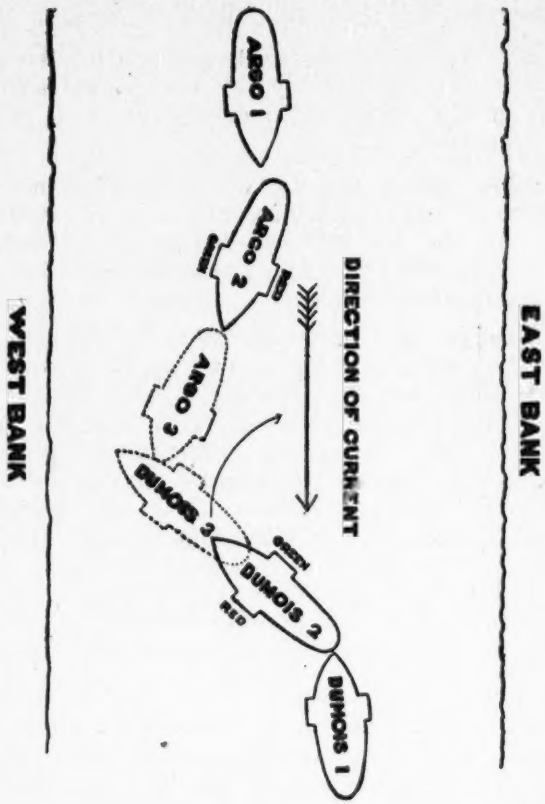
Rule 24, above referred to and which is invoked in this case, was discussed by the United States Supreme Court in The Maggie Hammond, 123 U. S., page 349, where the court said :

"The rule applies only where there is some special cause rendering a departure necessary to avoid immediate collision, such as the shallowness of water, or a concealed rock, the approach of a third vessel, or something of that kind."

None of these things prevail here, for the enlarged chart shows from 26 to 45 feet of water right up to the eastern shore, and the evidence shows the Day Dream and the lugger alongside of her only occupied from 40 to 50 feet, which would leave plenty of room for the Dumois to pass to the westward of the Day Dream and its lugger. Certain it is, that under no circumstances was it necessary for her at any time to have shot out in the river to the middle thereof where she says the collision took place, to pass said luggers and Day Dream, even if these latter, tied to the shore, are to be considered as "the approach of a third vessel," which we deny.

Even if, according to the theory of the Dumois, it was necessary for her to swing out in the river to pass the Day Dream and luggers, she then had the Argo on her own starboard bow and then it became her duty to keep out of the way of the Argo, and to do so, she should have ported her helm, and gone to the starboard at least after she was far enough out to clear said Day Dream and luggers, while the Argo should have con-

tinued her course as she did, and no collision would have been possible, as the following diagram will show:



The court quotes extracts from the evidence of Captain Brown to show he was in fault in not stopping his vessel and reversing, but—we think—it fails to appreciate, certainly to note—what we also think—is a very satisfactory reason for doing so. After stating that not 15 seconds elapsed from the time the signals were crossed by the Dumois (p. 63)—which was the beginning of the danger—to the time the vessels came together,

and that the Argo's speed could not be perceptably checked in that time, and in stead of stopping and backing, at p. 64 further said: "I thought when he rang the alarm and reversed that he would stop the headway of his ship and get me clear of him, the velocity I was going, him 10 miles an hour and me going 20 miles an hour. * * * And at page 65 said:

Q. When he crossed your signal, and you blew the single blast and put your helm hard aport, if you had undertaken—could you then, owing to the closeness which the vessels were together, could you have stopped and avoided a collision? A. No, sir, it was impossible.

Q. What was your judgment when you blew your whistle the second time and put your helm hard aport, as to what was best that could be done under the circumstances? A. That was to go ahead.

Q. Then I understand you to say, that, considering all the circumstances, the closeness of the vessels together, that it was your judgment, then and there, that the best for both to have done was for you to go ahead and throw your vessel to the starboard, put your wheel aport and throw it (vessel) to the starboard? A. Yes, sir, my judgment called for that in a tight place like that.

And yet the court says, "the master of the Argo (without telling why) believing in the speed of his vessel, and that he could run around and pass to the right of the Dumois in any event kept his course until he struck the Dumois and sunk his vessel." And that the master was justified in his belief, that the Argo (after the crossing of the signals by the Dumois,) could not have stopped and thereby avoided the collision, is also shown by the evidence of Orkney, the engineer, who, at page 73, said, the Argo would run half a mile after steam was shut off, and that, even if shut off and the engine had been reversed, there was not time, after the Dumois blew two signals crossing the signal of the Argo, for the Argo (which he says was making 200 turns per minute and 18 miles per hour) to have avoided the collision by stopping and backing.

And, as we have hereinbefore shown, after the Dumois crossed the signal and headed to cross course of the Argo, under said Rule 19 of Sec. 4233 U. S. and the regulations and illustrations of the Board of Supervising Inspectors, it was the duty of the Dumois to port "her helm and pass astern of the Argo, *while the Argo should continue on its course or port its helm*," but not to stop and back. This is the very opposite of what the court says was the Argo's duty to do.

One of the latest decisions in a collision case is that in the New York Connemaugh case, decided by the United States Circuit Court of Appeals, for the Sixth Circuit, and reported in the 82 Fed. Rep., p. 819. This collision occurred in the Detroit river, a short distance below the City of Detroit, and at a point where the river (according to the chart) was a little over half a mile wide, and resembles the collision in this case, and especially in the situation and relation of the colliding vessels just before the collision, when Rule 19 of said Sec. 4233 was applied. It gave the New York the character of the preferred steamer, and it does the same for the Argo, and more especially after the Dumois starboarded her helm, because the rule declares the vessel having the other on her own starboard must keep out of the way of the other, the very opposite of which the Dumois did.

In the New York case both vessels were on a port helm just before the collision, the Connemaugh following the tow. The latter signaled three different times for permission to pass to the starboard instead of the port side, and without receiving the consent or a reply of any kind, starboarded her helm and ran across the bows of the New York. Counsel contended that the New York, if she did not give consent to a starboard helm on the part of the Connemaugh, the signals of two blasts of the whistle, repeated by the Connemaugh three times, should have been answered by one blast of the New York's whistle; but the court holds the Connemaugh had no right to starboard under the circumstances, and that this was not a case where "silence gives consent," and that the New York was not obliged to give such signal.

The vessels were on parallel courses, says the court, and would have passed each other safely had the Connemaugh held her course, which the New York had a right to expect she would do. It was contended the Connemaugh was in danger of running into the tow of the Burlington (intervening between the two vessels) by holding her course, and that a starboard helm was necessary, and that under said Rule 24 she had a right to depart from rules and starboard her helm; but this claim was not allowed, although the Connemaugh was very close following upon the tow which she was seeking to avoid. The tow, then, in the New York case, represents the part counsel for the defense in this case seeks to make the luggers play. It is not disputed that the luggers were made fast to the shore. The Dumois claimed when she blew her signal of two blasts, which the Argo answered with one, that she wanted to go to port, but the Argo's one blast was notice to her that she did not have said Argo's consent and a declaration that the Argo would hold her course.

The Dumois claimed when she first sighted the Argo the vessels were half a mile apart, and hence the Dumois was half a mile from the luggers when she starboarded her helm. This, then, was the danger, and the only danger set up in justification for violating the rules to prevent collisions. We can see some excuse for the starboard helm of the New York with the Connemaugh running close in the wake of a tow, for naturally the master would want to get out of such a position; yet the court decided he had no right to starboard his helm without the consent of the New York.

There was a very good reason why the New York should not be required to consent to the change of course on the part of the Connemaugh. The parallel courses —both vessels having the other's red light—did not involve any risk of collision. The change the Connemaugh asked to make would endanger the New York, and she was not required to place herself in danger to take another out. The Connemaugh changed her course without the consent of the New York, and of the two

evils took what must have appeared to her was the least, and in doing so ran across the bows of the New York and was lost To uphold the Connemaugh in this case would be equal to saying, to get out of the danger of hurting A you can take a desperate chance of injuring B, and B, not knowing of your intention, must sufler if he does not keep out of the way, notwithstanding B is doing nothing wrong and is going ahead about his business in a lawful way. This is not the law. Rule 24 authorizes a departure from the previous rules of the collision act to avoid immediate danger, but it does not justify injuring someone else to save yourself, and then have the innocent stand the damage.

But when the position of the luggers in the Argo case is considered as playing the part of the tow in the New York case, the proposition is absurd. The Dumois had lots of room—she was not within half a mile of the luggers when she sighted the Argo and starboarded her helm. The luggers were tied to the bank and the Dumois had an abundance of room and water to pass without changing her course at all. It is very certain it was not necessary to cross the middle of the river and the course of the Argo to avoid the luggers, as the court would have to find to excuse the Dumois for her starboard helm. There was a space of at least 1,150 feet between the course of the Argo and the luggers, and with no obstruction in the way there was no necessity for crossing the bows of the Argo, and Captain Brown could not be expected to anticipate such an insane move on the part of the Dumois. Even after the Dumois had starboarded her helm, Brown had a right to expect the Dumois would not violate Rule 19, and to believe the Dumois would go astern of the Argo. On the whole, it would be hard to find a case more favorable to the Argo than the New York case, and that case holds the New York free from blame when she did just what the Argo did, to-wit, held her course and did not stop or attempt to stop. The Connemaugh had the New York on her starboard side, just as the Dumois had the Argo, after the former had starboarded and the latter had ported,

and the court holds it was the duty of the Connemaugh to keep out of the way, and the New York could not and was not bound to anticipate she would not do so. She had no right to try to cross the bows of the New York and might have gone astern of the tow, and the New York could not be held at fault for not stopping.

Again. A slight recalling of the facts as disclosed by the evidence on both sides will show how unfounded is the pretense of the Dumois that it was necessary to starboard her helm and run out into the river in order to prevent running into the luggers tied at the bank. According to the evidence of both sides the collision occurred below the place where the luggers were at the bank, and according to the evidence of the Argo she was to the westward of the course of the Dumois, and according to the evidence of the Dumois the Argo was dead ahead—both her signal lights being in view. Now, according to the evidence of either, the Argo having passed the luggers before the collision occurred, why was it necessary for the Dumois to starboard to pass the luggers, which the Argo had already passed?

And equally unfounded is the assertion that the Argo, because of her speed, was a dangerous craft, and hence a menace to commerce. Such an argument would absolutely prohibit any improvement in the speed of vessels and would render the modern steam vessel an impossibility.

Equally unfounded is the statement that the "Argo was not constructed so that her speed could be checked when required by the rules of navigation, or that she could be backed within any reasonable time after sighting danger." All there is in the case on this point is what is stated in the pleadings, to-wit, that her backing power was slight (but there is neither allegation nor proof of any kind that she could not stop and back as alleged), but this means that her backing power was slight as compared with her power or ability to speed ahead, and this is true of all fast steamers. They are made to steam ahead. The shap of the hull, and especially that of the bow as compared with that of the stern,

the construction of the propellers—speed wheels—and in fact the entire construction of the vessels indicate this. Like the Campagnia, the Lucania, the Teutonic, the Majestic, the St. Louis, the St. Paul, and still later the wonderful William the Great, which sustained the wonderful speed of 22.35 knots for an entire passage across the ocean. Surely no sane person would for a moment contend these were dangerous and unfit to pursue their business because they did not possess the same facility to run 22 knots backward, as forward. It is true of every fast vessel that her ability to go backward is slight compared with her ability to go forward. One of the best proofs of what is here stated is the fact that the Dumois, whose forward speed, it is said, was only from nine to ten knots per hour when under full steam, was unable to stop her forward motion against a strong current, even after it is said her engines were reversed full speed astern, and continued her forward course way beyond the Argo, going up the river entirely out of sight, according to the evidence of her first officers three or four lengths, and according to the evidence of the Argo half a mile before she was stopped. But even the comparative slight backing power of the Argo under no circumstances would justify the Dumois in suddenly wrongfully and illegally thrusting herself across the bows of the Argo.

And the facts of the case show the Argo was not running as fast as her master imagined, nor "recklessly" as the court observed, for the night was clear and there was plenty of water and no crowd of vessels. She left New Orleans on the evening of January 27, 1897, at 7 p. m., and had hastened all the way. The collision occurred a few minutes past 12 o'clock, and the point of collision, as shown by defendant's pleadings, was 85 miles below the city, while the map shows it was less than 80 miles, and this would give her speed at 16 miles per hour, or the speed her builders—Herreshoffs—say she was capable of making, and this would be in these times ordinary speed for any steam craft unless it was a scow or a tub.

It is therefore clear that neither Rule 21, as to slacking speed or backing, nor Rule 24, in reference to varying from the general rule in special cases, have any application to the facts of this case, for there was no danger of collision when the Argo blew her first whistle, because at that time, as we have shown, the Dumois was to the Argo's left, as was disclosed by her red light, and according to the evidence of the Dumois the Argo was dead ahead, as was disclosed by seeing both of her signal lights, when under Rule 18 and the diagrams and illustrations on page 78, it was her duty to port her helm —just as the Argo did—and pass on the port side of the Argo, where there was no possible chance of a collision, and because there were no special circumstances in this case requiring such a departure.

The only possible risk of collision was when the Dumois crossed the Argo's signal and wrongfully threw herself across the course of said Argo—a thing which Captain Brown says (at page 58) no sane man would attempt to do, and which, after 40 years' experience on the river, he has never known anyone to attempt to do, when it was her duty not to have put her helm to star board as she did, but to have put it to port and passed to the left of the Argo. And if it is said she had to swing out from the eastern shore to pass the luggers, which we again deny (for the mate of the Dumois says she was 500 feet from the bank, and the luggers occupied from 40 to 50 feet, leaving 450 feet clear, and there was deep water right to the bank), then it was clearly her duty to have stopped and backed without changing her course, and not to have attempted to cross or swing out at all until the Argo had passed. (The Atlas, 10 Black ford, 459.) In any event her forward motion with a star-board helm was radically wrong, and at this point of time, when the Dumois did throw herself across the course of the Argo, she was so close to the Argo that the latter could neither slacken her speed or stop before the vessels would come together. This is apparent from the evidence of both parties. Steam might have been shut off, it is true, and the engine started backwards,

but, as the engineer of the Argo shows, even when this is done she would go forward for a long distance before her forward motion would be stopped, just as the Dumois did when she was reversed full steam backward.

Under these circumstances and at this instant of time, Captain Brown's judgment was that he might, by putting his helm hard to port and continuing his speed, pass in front of the Dumois, avoid the collision and prevent being cut in two, which he thought might occur if he tried to stop. In this, it is true, he was mistaken. But this judgment was forced upon him by a condition of things brought about by the Dumois. In other words, he was put in *extremis* by the conduct of the Dumois, and for any damage which might result from such judgment the Argo is not responsible, for the proximate cause of the collision was the conduct of the Dumois, and the mistaken judgment formed by Captain Brown while in *extremis* by reason of the wrongful conduct of the Dumois.

This principle has often been decided. In the Elizabeth Jones, the Supreme Court, quoting from an English case (Bywell Castle, 4 P. D., 249), said:

"When one ship has, by wrong maneuvers, placed another ship in a position of extreme danger, that other ship will not be held to blame if she does something wrong and has not been maneuvered with perfect skill."

See also the Maggie J. Smith, 123 U. S., p. 349. The Nacoohee, 137 U. S., p. 340. The Blue Jacket, 144 U. S., p. 391.

There can be no doubt of the fault of the Dumois in crossing the course of the Argo. This was in direct violation of Rule 18 of said Sec. 4233, and in direct violation of the "standing rule" on page 78 of the rules and regulations prescribed by the Board of Supervising Inspectors of Steam Vessels, of January, 1896, even if the Argo was dead ahead, "meeting end on," for the Dumois, according to the evidence of her mate on watch, was 500 feet from the eastern shore and there was ample room for each vessel to pass on the port side of the other, and the contrary move on the part of the Dumois is alone

sufficient to account for the collision. In this situation the language of the Supreme Court in the case of the Oregon, 158 U. S., at the bottom of page 197, is of great importance in this case:

"Where one vessel is clearly shown to have been guilty of a fault, adequate in itself to account for the collision, seeks to impugn the management of the other vessel, there is a presumption in favor of the latter which can only be rebutted by clear proof of a contributing fault."

As a result of the foregoing we think we have shown that from the time vessels came in sight of each other to the time of the collision the Argo was at no time in fault, and the Dumois, during all of said time, was in fault in everything she did, that is:

First. The Argo being the descending boat in the middle of the river, and the Dumois being the ascending vessel toward the eastern shore, said Argo was not in fault in blowing the passing signal of one blast of her whistle, and said Dumois was in gross fault in crossing the signal of the Argo with two blasts of her signal. See "Third Situation" and diagram on page 79 of said Pilot Rules.

Second. If the Argo was not in the middle of the river, but nearer the eastern shore, still she was not in fault in blowing a passing signal of one blast, to pass to the right, because both of her signal lights were visible to the Dumois ("head and head"—see said Regulations, p. 72), while the latter was 500 feet from said shore, giving ample room for the vessels to pass on the port side of each other, and the Dumois was in gross fault in crossing the signals of the Argo, starboarding her helm and crossing the Argo's course, and in doing so violated "a standing rule" of the Supervising Inspectors of Steam Vessels (a rule that has the force of a statutory enactment—Belden vs. Chose, 150 U. S., 698). See "First Situation" and diagram, page 78 of said rules.

Third. That the Argo was not in fault when she again blew her signal of one blast, still insisting in going to the right, and porting her helm accordingly.

Fourth. The Argo was not in fault under the circumstances in not slacking her speed, stopping or backing, not being in the sense of the law the approaching vessel, and not having, after she was cros-signaled by the Dumois, sufficient time to do either, because, as shown in the "Fifth Situation," it was not the duty of the Argo to slacken speed, stop or back, but to continue her course, as she did.

Fifth. If in the latter respect it should in any manner be claimed the Argo was in fault (which we deny), then she was put in extremis by the wrongful and sudden change of course by the Dumois in thrusting herself in front of the Argo, and for any want of proper maneuver on the part of the Argo (if such there was, which we also deny) the Argo is not responsible.

THE NEXT PRINCIPAL QUESTION IS, WHAT WAS THE VALUE OF THE ARGO, AND WHAT DAMAGE HAS THE LIBELLANT SUFFERED?

The petitioner complains of the decree of the Court of Appeals in as to said valuation.

First. Because the decree of the lower court is for too small an amount, and under the evidence should have been for at least $20,000 with interest from the date of the loss, to-wit, January 28, 1897.

Second. That in no event should the amount awarded libellant by said decree have been for less than $15,000 (on the basis of which one-half interest in said Argo was sold to be delivered the day after her loss), with interest from said date of loss on January 28, 1897.

In examining the facts on the question of damage and loss it is prosper to bear in mind the law on this subject, which, briefly stated, is as follows: It is not what A or B would have given for the Argo, or what she would have sold for at forced sale, but what was her value in open market? The law on this subject has been stated in collision cases as follows: In the case of the Colorado, 1 Brown's Ad. Rept's, the court said:

"The vessel being a total loss, the value just before the collision is the measure of damages. The difficulty is to ascertain that value. The criterion is, what would she have brought in the market, not under the hammer at forced sale, but in the ordinary course of sales of such property? (Londes on Collision, 141 to 146; 1 Parsons on Shipping and Ad., 452.)"

In "The Atlas," 93 U. S., 310, the United States Supreme Court said:

"Satisfaction to the libellant for the injury sustained is the true rule of damages in a cause of collision, by which is meant that the measure of compensation shall be equal to the amount of injury received, and that the same shall be calculated for the actual loss occasioned by the collision, upon the principle that the sufferer is entitled to complete indemnification for his loss, without any deduction for new materials used in making repairs, as is prescribed in the law of marine insurance. Complete recompense for the injury is required."

The appearance, character, style and condition of the Argo are fully disclosed by her picture, her papers, and the evidence of the witnesses to be found in the record, from which it well appears she was slightly over 95 feet long, 15 feet beam, with 6 feet of hold, and when built in 1878 was called the Leila, with name afterwards changed to that of the Argo; and that, though built in 1878, she was subsequently rebuilt, received a new boiler, which as late as January, 1897, stood a hydrostatic pressure of 186 pounds and was allowed a working steam pressure of 124 pounds to the square inch, and in 1893 received a new hull, deck and other matters at a cost of $10,000 (Babcock, p. 140), making her in all respect a better boat than she was when originally built, and at the time of her loss, "from keelson to truck" was in first-class condition, and her outfit, furnishings, etc., were of the very finest, while her speed when pushed was 21 miles an hour.

What was the market value of such a craft, in such a condition and of such speed? What would be "complete compensation for the injury which the libellant has

sustained in her total loss? Certainly nothing less than $20,000, with interest from the date of said loss, and in no event not less than $15,000, for which one-half was sold, for which the money was to have been paid the day after her loss, had she not been lost by the sole fault of the claimant.

And first we will refer to the evidence of the claimant on this subject.

Captain Woodward was the first witness examined, and while it is true he says he made an examination of the Argo with the view of ascertaining her value, it is apparent from his evidence that such examination must have been quite superficial, for he says she was a high-pressure boat, and that to go to sea she would have to have the addition of a condenser (p. 287), whereas her official papers show she had a compound condensing engine (p. 175), and Orkney, her engineer, says she had a compound keel condenser (p. 68). And, strange as it may appear, Captain Woodward further said speed of 21 miles an hour would not be an element of her value (p. 287), while to a yachtman speed is the principal element of value and the great item in the cost of construction.

With such an imperfect knowledge of the vessel, Captain Woodward says he thought she might have sold for $8,500 (not that this was her value), and that he would not have offered more; but says frankly that that amount does not fix the value of the boat, but that he would not have offered more (p. 280) (evidently with a view of buying her and again selling at a profit); but when his attention was called to the fact that she had been sold for $15,000, to be delivered the day following that on which she was lost, he says that sum would fix her value (p. 281).

The evidence of the Hereshoffs (p. 306), the original builders of the Leila (which was afterwards called the Argo), has also been taken, and it declares the original cost of the Lelia was $18,000, and to duplicate her would cost $20,000, and that if she had been kept in good repair one-third of the last amount should be deducted,

which would fix her value at their place in Bristol, R. I. (but not in New Orleans, and it would cost a large amount to bring her here) at $13,334. But the building of a new hull, strapped and braced with iron braces and supports beyond what she was when built, with a new deck, made her, in fact, a new boat, and as the witnesses who were conversant with this construction say, made her a better boat than when she was new.

The evidence on the subject of value is as follows:

W. I. Babcock, manager of the Chicago Ship Building Co., and of large experience in the building and repairing of vessels, says she was worth $17,500 (p. 140).

David M. Cochrane, a steamboat man of large experience, who carefully examined the Argo in Chicago in 1895, in the fall, places her value at the time of her loss at $18,000 to $20,000 (p. 143), and says that to duplicate her anew would cost from $26,000 to $30,000. Not to duplicate her as she was when originally built, but as she was in 1895, when, owing to having received a new hull and other things, she was a "better boat than when built."

Frank Huettman, of Detroit, who was the builder of yacht engines and machinery for steam yachts, and who had done all the work on her while she was in Detroit, and who was on her in Galveston, Texas, in 1896, for 10 days and took apart her machinery, put in a new truss bearing and did other work on her, and thereafter replaced all her machinery and made three or four trips on her, finding her in first-class condition, says that on January 28, 1897, her market value would be from $25,000 to $30,000 (p. 122).

Timothy E. Tarsney, of Detroit, an attorney at law and a proctor in admiralty, but prior thereto for seven years a practical marine engineer on the western lakes, on January 28, 1897, puts her value at $18,000 (p. 125), and on cross-examination said:

"I base my opinion as to the value of the Argo when she was lost in January, 1897, upon my knowledge of the construction and equipment of steam vessels, a practical experience as a marine engineer for seven

years, a practical experience in machine shops and in the operation of stationary engines, and my experience as proctor in admiralty, and knowledge generally acquired from persons familiar with steam vessels, and more particularly from personal observation and inspection of the yacht Argo, as stated in my answer to the third direct interrogatory; and about three weeks ago a client of mine sold her steam yacht "Azalia" for a consideration of $18,000. I was consulted concerning the sale. In my judgment the value of the Argo exceed that of the Azalia (p. 127)."

William Howie Muir, of Detroit, a manufacturer, has had no experience in buying, selling or building yachts, was acquainted with the Argo when she was called the Leila, and before she was rebuilt at Chicago at a cost of over $6,000 (p. 146), and knows she was sold for $9,000 or $7,000 to the Chicago people at a sacrifice because the parties who held her had no use for her; but he never saw her thereafter and can put no value on her at the time she was lost (p. 128).

Safford S. Delano, of Detroit, treasurer of a car company, has had no experience in buying, selling or building yachts, but knows the Leila was bought in 1884 for $10,644.03, and was sold in 1892 for $7,000—a price far less than her value—because the concern which owned her was going out of business and was willing to sell her at a great sacrifice rather than be bothered with her; but these sales were all made prior to the rebuilding of the Argo at an expense of $10,000 (p. 140), after which the witness says he is incompetent to put any value on her at the time she was lost (p. 131).

Thomas E. Miller, president of Miller Bros.' Dry Dock Company, Chicago, Ill., helped to rebuild the Argo in 1893. The company's bill for carpenter work alone was $5,746.32 He did not remember what the "other work cost," done at that time and consisting of "a great deal of machinery, boiler and blacksmith work was done at same time. Plates were put under the decking to strengthen her sides, and other work was done." (Record, pp. 145-6.) But Mr. Babcock says

Miller Bros.' bill was about $10,000, and by this he means, undoubtedly, the total cost of rebuilding which was done at Miller Bros.' dry dock, for he O. K.'d the bills (Record, p. 142). Mr. Miller places the value of the Argo at $20,000 to $25,000 (Record, p. 146).

Edward H. Gillman, of Detroit (p. 135) has had much experience in buying and selling steam yachts and steam vessels, and knew the Leila before she was sold to the Chicago people, and when she was running from Detroit to Grosse Pointe, for whom he made a careful examination of her at the time of their purchase, when said Chicago people paid $7,000 or $9,000 for her, and at which time he says she was positively worth from $12,000 to $15,000. This, of course, was before she had been rebuilt by said Chicago people at the above expense of $10,000, after which this witness never saw her, and hence can put no estimate on her value at the time of her loss; but says if she was in as good condition—and she was in far better condition after receiving a new hull, deck, and other repairs—as she was when she was sold as the Leila to Chicago, she was worth from $12,000 to $15,000, and that a vessel of her class could not be built for less than from $30,000 to $35,000.

Captain A. Thomas, of New Orleans (p. 188), who is familiar with boats, who has been a dry dock man, a pilot and captain, and who has built boats and owned vessels, carefully examined the Argo a few days before she was lost, and found her in first class condition in every respect, and considered her worth from $25,000 to $30,000.

In addition to all of the above, the evidence of Bagley (pp. 185-6) and Springer (p. 184) shows that the latter had concluded a sale of one-half of the Argo to the former for $7,500, and that she was to have been delivered and the money paid for said one-half interest on the day following that on which she was lost and on her return to the city. This was an actual sale in this market, and under the law as declared in "The Atlas," 93 U. S., 310, the libellant is at least entitled to compensation at least this amount.

See also Springer's evidence (p. 181).

Some evidence has been offered to show libellant at one time before she was lost, offered to sell her for $12,000 and allow a commission, but the same evidence (Gen. Miller) shows it was because the libellant had become tired of a yacht and wanted to get rid of her badly, and his own evidence shows it was because he was in need of money, and wanted to avoid the expense of taking her back to Detroit (p. 237). But this is not legal evidence.

From all the evidence we think it will appear that the value of the Argo at the time of her loss was not less than $20,000, for which the libellant should have judgment, with costs.

When we take the various amounts given by each of the witnesses examined and add them together and divide the sum by the number of witnesses examined, the result will show how entirely wrong is the amount awarded by the court. This will appear as follows:

Woodward, - - - - - - - - -	$ 8,500
J. B. Herreshoff, cost, $20,000; depreciation, from one-third to one half, say, - -	11,667
N. G. Herreshoff, cost, $20,000; depreciation, one-third, - - - - - - - -	13,334
Bakcock, - - - - - - - - -	17,500
Cochrane, from $18,000 to $20,000, say, -	19,000
Huettman, from $25,000 to $30,000, say, -	27,500
Tarsney, - - - - - - - - -	18,000
Miller, Thos. E., from $20,000 to $25,000, say,	22,500
Muir gives no valuation, but says the Leila was sold (this before receiving a new hull, deck, etc) from $9,000 to $7,000, say, -	8,000
Delano gives no valuation, but says she was sold for less than her value because of no longer use (this before receiving new hull, etc.) for $7,000, - - - - - -	7,000
Cillman examined her as to value before receiving new hull, etc., when sold to Chicago in 1892, and valued her at $12,000 to $15,000 in 1897, - - - - -	13,500

Thomas examined just before her loss and valued her from $25,000 to $30,000, say,	27,500
Miller says libellant offered to sell her for, -	12,000
Springer valued her at, - - - -	20,000
Bagly closed bargain for half at $7,500, making,	15,000
Total valuation, - - - - -	$241,001

And this sum divided by the total number of witnesses examined (15) gives a valuation of $16,066.73⅓

But if we deduct the amounts given by Muir and Delano, who were not experts in such matters ($8,000 and $7,000, or $15 000) from the above $241,001, we get valuation of $226,001, and this divided by the number of the other 13 witnesses gives $17,384.

In view of the foregoing we assert with confidence that under no system of calculation or reasoning can the amount of $15,000, without interest awarded by the Court of Appeals be sustained as the valuation of the Argo when destroyed by the Dumois on January 28, 1897. No interest was added by that court. Certainly libellant is entitled to interest on his loss from the date of it.

And surely not when the uncontradicted evidence shows one-half of the vessel was actually sold, to be delivered the day after that on which she was lost, at a valuation of $15,000, and in the market where she at the time was, while the best evidence in the case conclusively shows her value at said time was fully $20,000, nothing less would be compensation for her wanton destruction by the Dumois and the loss sustained by the libellant—that compensation which the Supreme Court, in "The Atlas," 93 U. S., p. 310, declared one thus injured was entitled to recover.

Evidently the learned court, in assessing the damages, did not apply the correct rule for finding the value of a vessel lost in a collision, when the vessel is a total loss. The question is, what was the value of the Argo just before the collision? This question cannot be answered by taking the original cost of the Leila and deducting for depreciation occasioned by use and age.

First—Because the Leila, we have shown, when rebuilt and called the Argo, was a better boat than when first built.

Second—Because such method of finding value is applicable only when the vessel lost has been constructed for a special purpose not in the line of ordinary shipping, or when there is no other evidence of value offered to guide the court.

There was nothing peculiar about the construction of the Argo and she was useful for many purposes, as her license and the evidence of Mr. Bagley and Mr. Thomas shows.

It will be admitted that the value of the Argo should be found from the best evidence of that value, and not from the "next best" or the poorest evidence of her value. The best evidence of the value, according to the rule in the Colorado case above quoted, is found in the depositions of T. E. Tarsney, Thos. M. Miller, W. I. Babcock, David M. Cochrane, Frank Huetteman, N. R. Bagley and Capt. A. Thomas. All of these witnesses knew the Argo, testified she was in first-class condition, and gave evidence of her value. Mr. Thomas and Mr. Bagley saw and examined the vessel a few days before or "just before the collision," and they placed her value at $25,000 to $35,000. (Record, pp. 185, 189)

"The correct rule upon this subject when the vessel is a total loss seems to be that the market value of the vessel just before the collision is the proper measure of damages; that the best evidence of such value is the opinion of competent persons who knew the vessel shortly before she was lost, and the next best evidence is the opinion of persons conversant with shipping and the transfer of vessels."

The Colorado 1 Browns Adm. p. 413.

If this rule is applied, as it should be, to the case at bar, the evidence of J. B. and N. G. Herreshoff will be found incompetent and hence should not be received as establishing the value of the Argo. The same thing

may be said of all the evidence intr duced for the claimant on the measures of damages.

Wherefore libellant prays that the decree herein be reversed, and that a decree be rendered in his favor for the full value of said Argo, to wit: $20.000 with interest at five per cent per annum from the date of his loss (January 28th 1897), until paid with all costs of the District Court, the Circuit Court of Appeals and this Honorable Court, and for such other and further relief and redress as to right and justice may appertain and as the Court is competent to give in the premises.

Respectfully submitted.

RICHARD DEGRAY,

Proctor for Oscar M. Springer, libellant.

may be said of all the evidence intr duced for the claimant on the measures of damages.

Wherefore libellant prays that the decree herein be reversed, and that a decree be rendered in his favor for the full value of said Argo, to wit: $20.000 with interest at five per cent per annum from the date of his loss (January 28th 1897), until paid with all costs of the District Court, the Circuit Court of Appeals and this Honorable Court, and for such other and further relief and redress as to right and justice may appertain and as the Court is competent to give in the premises.

Respectfully submitted.

RICHARD DEGRAY,

Proctor for Oscar M. Springer, libellant.

Brief
for
Respondent

Supreme

ANDR

OSCAR M. SPRINGER, Petitioner,

Objections and Answer of Oscar M. Springer to the Petition for a Writ of Certiorari, in the Nature of an Appeal, and Brief in Support to Said Objections and Answer.

RICHARD D

Proctor for Respondent, O. M. Springer.

3rd Objection—Because, if petitioner was ever entitled to said writ now prayed for (which is denied), he has, by his long silence, abandoned the same.

ANSWER.

In case the foregoing objections are not considered good, then respondent answers as follows. He denies all the allegations contained in the petition filed herein, tending in any way to charge the steam yacht Argo with fault in causing the collision therein referred to, and especially does he deny, that just previous to said collision, and when the vessels came in sight of each other, the said Argo was on the Eastern bank of the Mississippi river, or near said bank, and he avers she was in her proper place for a descending vessel, in the middle of the river, and he further denies that said Dumois gave the first signal of two blasts of her whistle, to which the Argo responded by a cross signal of one blast of her whistle, and avers the first signal was given by said Argo of one blast of her whistle and that this was wrongfully crossed by said Dumois by two blasts of her whistle, when said Argo again blew one blast of her whistle and ported her helm to go to starboard, but that said Dumois in utter disregard of the signals of said Argo, and in open violation of Rule 18, of Section 4233 of the Revised Statutes of the United States (being then in full force at the place and the time where said collision occurred) put her helm to starboard, changed her course and shot in front of said Argo, and thereby caused said collision. And he denies that said Dumois stopped her speed before the collision occurred, but wrongfully continued on her changed course under said starboard helm, going clear past said Argo and out of her sight. And further answering respondent says that after said Dumois had wrongfully starboarded her helm and was crossing the course of said Argo, she then had said Argo on *her* starboard bow, and under Rule 19 of

said Section of said Statutes it was then the duty of said Dumois to keep out of the way of said Argo, and in doing so to have ported her helm and passed astern of said Argo, which she did not do, but the contrary, while it was then the duty of said Argo to continue her course or port her helm, both of which she did do, said Argo having first given the proper signal of one blast of her whistle, all in accordance with said Rule 19, and in accordance with the "RULES AND REGULATIONS PRESCRIBED BY THE BOARD OF SUPERVISING INSPECTORS OF STEAM VESSELS, as amended January, 1896," (in force at the time of said collision), p. 79.

And further answering, respondent denies that it ever was necessary for said Dumois to have starboarded her helm and gone out in the river to have cleared said tug Day Dream and her tow of luggers, and avers that there was a full space of 450 or 500 feet between said luggers and the course said Dumois was pursuing, before she attempted to cross the river, and that in no event was it proper to have changed her course across the river and the course of said Argo, but in case Day Dream and luggers were in her way as alleged (which is denied), then she should have stopped and backed until she could have passed in safety, all of which, as well as all the other matters involved in the present application were fully alleged in the petition of the respondent herein in his application for certiorari, and shown in his brief in support thereof, which were duly served on the present applicant and were never noticed by him at the said hearing before this Honorable Court on October 10, 1898.

Wherefore respondent prays that the certiorari prayed for by petitioner be denied with costs.

Respectfully submitted,

OSCAR M. SPRINGER,
By R. DEGRAY, *His Proctor.*

RICHARD DeGRAY,
Proctor.

Richard DeGray being duly sworn deposes and says, that he is proctor for said Oscar M. Springer, who is a non-resident of Louisiana and who resides in the city of Detroit, Michigan, that he has no duly authorized agent or attorney in fact in the city of New Orleans and State of Louisiana to the knowledge of affiant, and that the matters and things set forth in the foregoing answer are true to the best of his knowledge, information and belief.

RICHARD DEGRAY,

Sworn to and subscribed before me this 8th day of April, 1899.

F. H. MORTIMER,
U. S. Commissioner.

Brief in Support of the Foregoing Objections and Answer.

Long before the present application for a writ of certiorari was made, the present petitioner was duly notified, (early in September, 1898) by O. M. Springer, the libellant, that he would make an application to this Honorable Court on October 10th, 1898, for a writ of certiorari, and the present petitioner was served with said Springer's petition praying for said writ and his brief in support of the same, and it was then and there his duty (if any complaint he had against the decree of the Circuit Court of Appeals) to have joined in an application for said writ, setting forth his grounds of complaint. This he did not do, but on the contrary utterly ignored the whole matter, never noticed Springer's application, and by his silence acquiesced in the correctness of the decree of said Court of Appeals, of which he now, long after said writ has been granted on Springer's application, for the first time seeks to complain.

It cannot now be contended in this case that petitioner, by analogy to the law granting appeals, has a full year to apply for said writ. This might be true if the matter of granting said writ had not already been before the Court for its consideration and determ-

ination. We are aware that it was so said in the case of The Conqueror, 166 U. S., p. 110, but in that case no prior application for the writ had been submitted to the Court after due notice, and been considered and decided.

Moreover, the right to an appeal and cross appeal, and the right to a certiorari are entirely different. The right to the former, where the case is appealable, is an absolute right, to which the party is entitled for the mere asking, upon complying with the terms of the statute in such cases made and provided, while the latter is only to be granted after notice, argument by brief, and consideration and determination by the Court, and the Court ought not twice, in the same case to determine—to adjudge—whether the writ should issue or not first for one side, and thereafter by another separate and distinct application determine whether it should issue for the other side, and especially not after the present petitioner has acquiesced in the correctness of the decree of the Court of Appeals since October, 1898, when that precise matter was before this Court on Springer's application, and he has ever since acquiesced in said correctness even up to the present application. To do so would be to allow the opposite side in the first application to take his chances of having the examination of the decree below denied and thereafter to complain of said decree by a subsequent and independent proceeding.

If the above views are not correct then the right to invoke the judicial consideration of the Court on the matter of certiorari in the same case is only to be limited by the number of the parties to the decree who may consider themselves from time to time injured thereby.

And acting on the belief that after the present petitioner failed to notice the application for *certiorari* when the matter was before the Court on October 10, 1898, his right to complain of the decree of the lower Court ceased, the present respondent has prepared his brief and the same is now on file, and only notices the matters

whereof he has complained in his application for *certiorari.*

Surely, inasmuch as the granting of the writ of certiorari requires argument by brief, consideration and determination by the Court, all parties, when the matter is before the Court, should then and there be bound to make all their complaints, if any they have. In other words, all cross applications for certiorari should, in the language of the 22 Rule of this Honorable Court in reference to cross-appeals, "be argued together as one case," not only on the merits, but as well as in granting the writ, for, as before stated, the granting of the writ is not a matter as of course, but a matter that involves argument by brief, and consideration and determination by the Court.

But in addition to the above there is another reason why, in matters of application for writs of certiorari all complaints of the decree of the lower Court, and the propriety of the issuance of the writ should be heard and determined at one time, to-wit: the large amount of costs that are incident to such an application, which is well illustrated in this case, as follows:

When petitioner Springer applied for a certified copy of the record of the United States Circuit Court of Appeals, although it was all in print just as it had been used in said Court of Appeals, with the sole exception of seventeen pages covering the proceedings in said Court of Appeals, he was compelled to pay and did pay the clerk of said Court $257 for said copy, being charged therefor under the provision of the fee bill prescribed by this Honorable Court for said Court of Appeals, reading as follows:

"Entering any rule, *or making* or copying any record or other paper, for each hundred words, 20 cents."

Said Springer also paid as a deposit in this Honorable Court $25 on filing his application, and after the writ was granted, although he furnished IN PRINT twenty-five copies of said record in addition to the ten copies on which his application for said writ was granted,

he paid an additional sum of $295 to the clerk of this Honorable Court, making a total of $577, and in addition to which he has paid other sums for printing for the record now in use. Surely this expense ought not to be duplicated in this case, nor ought the present petitioner, after taking his chances of having the writ denied when applied for by respondent, and then allowed to come in and avail himself of the expenses already paid by respondent, and pay nothing himself. Not only this second and separate consideration and determination of the Court required under the present application would forbid this application, but also the heavy costs that must follow simply because the present petitioner did not ask for the relief he now seeks when the opportunity offered him again.

It seems to us that the reasons given by this Honorable Court for the dismissal of cross-appeals for lack of perfection or prosecution are valuable in considering this (as it were) cross application for a certiorari, made many months after the writ had been granted on the application of the opposite party after due notice, and to which no attention was paid by said opposite party, by entering his appearance, opposing said application, applying for a writ himself or otherwise.

In the case of the "S. S. Osborne," 105 U. S., p. 447 where W. G. Winslow and H. J. Winslow were libellants and B. O. Wilcox was claimant of said steamship, the Court at page 450 said:

"When the decree of the Circuit Court was rendered, both the Winslows and Wilcox appealed to this Court. The Winslows filed the transcript and docketed their appeal here on the 19th of September, 1879, but Wilcox neither entered his appearance as appellant in this Court nor did anything to make himself an actor in reference to his own appeal, until March 23d, 1882, the day before the cause was called for a hearing. Under these circumstances we must decline to consider his appeal. *Grigsby vs. Purcell*, 99 U. S. 505. Rule 9 of this Court requires every plaintiff in error or appellant, on docketing his cause, to have the appearance of counsel entered; and Rule 10, that he secure the costs. Cross-appeals must be prosecuted like other appeals. Every appellant, to entitle himself to be

heard on his own appeal, must appear here as an actor in his own behalf by having the appearance of counsel entered and giving the security required by the rules. Otherwise, if he is here as appellee on the appeal of his adversary, he will be heard only in support of the decree as it was entered below. If he asks affirmative relief beyond what he got below, he must enter himself in this Court in due time as the prosecutor of his own appeal, even though his adversary has docketed the case against him."

In The Tornado, 109 U. S., at page 117, the Court said:

"The final decree of the Circuit Court was entered on the 24th of May, 1880. On the 26th of June following, the underwriters on the cargo filed a petition in the Circuit Court praying a cross-appeal to this Court from the decree, and it was allowed, returnable at the October term, 1880. On the 5th of July following, the bond on the cross-appeal was filed in the Circuit Court. But the appellants in the cross-appeal did not docket it or enter their appearance on it, in this Court, until September 27th, 1883; and the appellees in it are entitled to have it dismissed. *Grigsby vs. Purcell*, 99 U. S. 505; *The S. S. Osborne*, 105 U. S. 447."

It is quite true this Honorable Court has decided in Panama R. Co. vs. Napier Steamship Co., 166 U. S., p. 280, that the writ of certiorari brings up the whole case, but this is only for the purpose of determining whether the matters complained of by the petitioner are well founded in fact or law, and whether the decree complained of ought to be reversed, but it has never been decided that notwithstanding the whole case is brought up by the writ any matters are open to the party not applying for the writ in due time and when the opportunity offered, to be examined by the Court. In fact, directly the contrary was decided in Hubbard vs. Ted, 171 U. S., p. 474.

Respectfully submitted,

RICHARD DEGRAY,

Proctor for Respondent, O. M. Springer.

SUPREME COURT OF THE UNITED STATES.

October Term, 1899.

No. 413.

ANDERS JAKOBSEN, Claimant of Norwegian Steamship Albert Dumois, Appellant, vs. OSCAR M. SPRINGER et al., Appellees.	No. 272.
OSCAR M. SPRINGER, Appellant, vs. ANDERS JAKOBSEN, Claimant, Appellee.	No. 139.

SUPPLEMENTAL BRIEF OF TIMOTHY E. TARSNEY ON BEHALF OF OSCAR M. SPRINGER, APPELLANT.

On January 28th, A. D. 1897, a collision occurred between the steamer Dumois and the yacht Argo, owned by appellant, which resulted in the sinking of the yacht, and the total loss thereof. On the same day Mr. Springer filed a libel in the District Court of the United States for

the Eastern District of Louisiana against the said steamer Dumois. A warrant was thereupon issued and the vessel seized by the marshal. (R., p. 4.)

January 29, 1897, Isaac Broadhurst and others, composing the crew of the Argo filed an intervening libel against the Dumois, claiming for loss of effects. (R., pp. 5-7.)

February 3d, 1897, a petition was filed by claimant of steamer Dumois for appraisement of vessel and for benefit of the liability act, on the same day order of appraisement was made, and upon giving stipulation for the amount of the appraised value, the vessel was ordered released. (R., p. 11.) The vessel was appraised at the sum of thirty thousand dollars. (R., p. 12.) The stipulation having been given, the vessel was released February 4, 1897. Mr. Springer subsequently took the benefit of the limited liability act and surrendered the wreck of the Argo. (R., pp. 42-3.)

February 3, 1897, Mrs. Marie B. Bourgeois de Blesine, the mother of one of the persons lost in the collision, filed a libel claiming damages alleged to have been sustained by reason of the death of her son, and on May 4th, Mrs. Hester filed her intervening petition, as widow of Harrison P. Hester, the other person lost in the collision.

The libel of Mrs. de Blesine is against Anders Jacobsen, owner of the steamship Dumois (R., p. 13), and prays that a warrant may issue for the arrest of said Jacobsen and an attachment of his goods and chattels for want of personal service. (R., p. 15.) This libel appears to be *in personam* against the owner and does not seek to enforce a claim against the offending res.

The petition of Mrs. Hester (R., p. 30) is an intervening petition, recites the giving of the stipulation by the owners of the steamship Dumois, and prays a decree against the sureties on the bond of the steamship Dumois.

If Mrs. de Blesine and Mrs. Hester have a claim which they could assert as against the offending vessel, it must be by virtue of the local statutes of the state of Louisiana, for they have no claim which they can assert by virtue of the general admiralty law.

This court held in Harrisburg vs. Richards, 119 U. S., 199, that "death on the high seas or waters navigable from the high seas caused by negligence, does not create a cause of action in admiralty unless given by an act of Congress or a state statute."

In this case Mr. Chief Justice Waite reviewed the decisions upon this subject, and while before that time there had been a conflict in the decisions of the courts, this case settled the question that under the general admiralty law there was no lien arising from death caused by negligence.

We must then look to the local laws of Louisiana to ascertain whether any cause of action there arises.

Article 2315, Revised Code of Louisiana, reads, "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it. The right of this action shall survive in case of death in favor of the minor children and widow of a deceased, or either of them, and in default of this, in favor of the surviving father and mother, or either of them for the space of one year from the death."

A cause of action no doubt survives under this statute in favor of the persons therein named and against the person offending; but it does not follow that because the cause of action survives and an action in personam may be brought against the offending owner, that thereby a lien is created against the offending thing. No doubt either of these parties, other conditions existing, might bring a personal action in the courts of Louisiana against the owners of the Dumois, for that is an entirely different action from a proceeding in rem against the vessel, or the bond which represents the vessel.

Indeed, this court in Barton vs. Brown (The Corsair), 145 U. S., 335, in an opinion by Mr. Justice Brown, in discussing the Louisiana statute, said:

"A maritime lien is said by writers upon maritime law to be the foundation of every proceeding in rem in the admiralty. In much the larger class of cases the lien is given by the general admiralty law, but in other instances, such, for example, as insurance, pilotage, wharfage and materials furnished in the home port of the vessel, the lien is given, if at all, by the local law. As we are to look, then, to the local law in this instance for the right to take cognizance of this class of cases, we are bound to inquire whether the local law gives a lien upon the offending thing. If it merely gives a right of action in personam for a cause of action of a maritime nature, the District Court may administer the law by proceeding in personam, as was done with a claim for half pilotage dues under the laws of New York, in the case of Ex Parte McNeil, 80 U. S., 13 Wall., 237, but unless a lien be given by the local law there is no lien to enforce by proceedings in rem in the Court of Admiralty.

"The Louisiana act declares, in substance, that the right of action for every act of negligence, which causes damage to another, shall survive, in case of death, in favor of the minor children or widow of the deceased; and in default of these, in favor of the surviving father and mother, and that such survivors may also recover the damages sustained by them by the death of the parent, child, husband or wife. Evidently nothing more is here contemplated than an ordinary action according to the course of law as it is administered in Louisiana. There is no intimation of a lien or privilege upon the offending thing which, as we have already held, is necessary to give a court of admiralty jurisdiction to proceed in rem."

The foregoing authorities would seem to dispose of the claims of Mrs. de Blesine and Mrs. Hester.

II.

The decree of the District Court awarded Mr. Springer the sum of $11,000, Mrs. de Blesine the sum of $2,500, Mrs. Hester the sum of $3,000, and various smaller amounts were awarded to different members of the crew.

The Circuit Court of Appeals reversed the decree of the court below, found both vessels at fault and divided the damages, and in addition thereto directed that one-half of the awards of Mrs. de Blesine and Mrs. Hester be deducted from the one-half damages awarded to Mr. Springer. This, we submit, is manifest error. The owners of both steamers having brought themselves within the limitations of the liability act, no sum could be awarded beyond the value of the vessel in the condition she might be in *after* the collision.

In Place vs. Norwich Transportation Company, 118 U. S., 468, this court said:

"The next question to be considered is: At what time ought the value of the vessel and her pending freight to be taken, in fixing the amount of her owner's liability? Ought it to be taken as it was immediately before the collision or afterwards? And if afterwards, at what time afterwards? The first question has been repeatedly answered by the decisions of this court. We held in Norwich Co. vs. Wright, and have held and decided in many cases since, that the act of Congress adopted the rule of the maritime law as contradistinguished from that of the English law on the subject; and that the value of the vessel and freight after, and not before, is to be taken. * * In the case of The Scotland, 105 U. S., 24, the collision occurred opposite Fire Island Light, and the steamer, being much injured, put back, in order, if possible, to return to

New York, but was unable to get further than the middle ground outside and south of Sandy Hook, where she sank, and nothing was saved but a few strippings, taken from her before she went down. We held that these strippings were all of the ship that could be valued, although she had run thirty or forty miles after the collision. The value was taken, not as it was, or as it might have been supposed to be, immediately after the collision, but as it was after the effects of the collision were fully developed in the sinking of the ship."

This rule was followed in The Great Western, 118 U. S., 520.

The Argo having become a total loss immediately upon the occurring of the collision, the liability of the owner having been limited, nothing, of course, could be recovered either from the Argo or from the owner thereof.

After the filing of the stipulation by the owner of the Dumois, the only thing against which creditors of the vessel could proceed was the stipulation filed by the owners upon the release of the vessel, which became a substitute for the released vessel and the rights and remedies of all parties interested in such vessel remained unaffected; but the substitution of the bond and such stipulation are to be regarded precisely the same as though the vessel itself were still in the custody of the court as the actual res to be subjected to its decree. The Wanata, 95 U. S., 611; U. S. vs. Ames, 99 U. S., 42.

After the filing of such stipulation there was the substitute in the custody of the court amounting to the sum of $30,000 which constituted a fund to which all creditors could look for satisfaction, and the only fund from which redress could be sought. Mr. Springer, as the owner of the Argo, and the intervening libelants were all, then, independently of one another, looking to that fund and the recovery of each would be in no wise affected by the recov-

ery of the others, except in the event of the aggregate recovery of all exceeding the penalty of such stipulation, in which event, if the claims were all of the same class, a pro rata deduction would be made.

Even if this were a case where a division of damages would be proper as between the owners of the colliding vessels, I am utterly at a loss to comprehend upon what principle or under what rule a deduction should be made from the amount recovered by the owner of the Argo and applied upon the claims of the intervening libelants. If both vessels had been saved and both had been joined in the libels of the intervenors and both had been found in fault the decree might have been satisfied out of either, and there would have been no contribution, for the law does not recognize the principle of contribution among tort feasors.

As was said by Mr. Justice Brown, in Barton vs. Brown, supra, in speaking of the rules of practice adopted by this court:

"These rules, from 12 to 20 inclusive, were intended to prescribe a remedy appropriate to each class of cases in admiralty, allowing in certain cases a joinder of ship and freight, or ship and master, or alternative actions against the ship, master, or owner alone. In no case, however, under these rules, except in possessory suits, can the ship and owner be joined in the same libel, though perhaps they may be in cases not falling within the rules. * * *

In Newell vs. Norton, 70 U. S., 257, the District Court in accordance with the prayer of the libel, issued process in rem against the vessel for a collision, and citations in personam, against the master, owner and pilot. On exceptions being filed for misjoinder, the court ruled that an action against the owner and pilot could not be joined with the proceeding in rem, and that the libelant must elect which remedy he would pursue; and, he having

elected to proceed in rem against the steamboat and in personam against the master, the libel was dismissed as to the owners and pilot, and sustained as against the steamboat and master. The allowance of this amendment was held by this court to be proper, Judge Grier observing, however, that the objection that a libel in rem against a vessel and in personam against the owner cannot be joined was properly overruled. The word "owner" here is evidently a mistake for 'master,' as appears from the syllabus and statement of the case."

The intervening libel of Mrs. de Blesine being properly in personam, and having no reference either to the vessel or stipulation, cannot be treated as a claim against the vessel or against the principal or sureties in such stipulation. In other words, if she has a remedy at all, it is a remedy entirely outside of the subject matter involved in this suit as the fund from which claimants can obtain satisfaction.

III.

As to the claim of the seamen a different rule obtains.

In The Niagara, 77 Fed. Rep., 329, Judge Brown lays down the rule, "As respects the personal effects of the master, officers and crew, the rule followed in this court has been that the ship's company are identified in interest with their own ship as respects any damages arising from faults in navigation which is their common duty and employment and that they therefore recover half damages from the other ship in case of mutual fault. Citing The Queen, 40 Fed. Rep., 694; Killien vs. Hyde, 63 Fed. Rep., 172; The A. Heaton, 43 Fed. Rep., 592; Quebec Steamship Co. vs. Merchant, 133 U. S., 378; Hedley vs. Steamship Co., 1 Q. B., 58.

(V.)

My brother, De Gray, has very clearly demonstrated in his admirable brief that the rules adopted by the Board of Supervising Inspectors do not apply in this case, but that the collision occurred at the point where the United States Statutes or the International Code of Rules govern the conduct of vessels. And it seems clear that Rule 18, Section 4233 of the Revised Statutes governs this case: "If two vessels under steam are meeting end-on, or nearly end-on, so as to involve risk of a collision, the helms of both shall be put to port, so that each may pass on the port side of the other."

The rule is well settled that steamers approaching each other from opposite directions are respectively bound to port their helms, and pass each other on the larboard side.

N. Y. & B. Trans. Co. vs. Phila. & S. S. Nav. Co., 22 Howard, 461.
The Niagara, 3 Blatchf., 37.
Williamson vs. Barrett, 4 McLain, 589.
Williamson vs. Barrett, 13 How., 100.

This rule must be acted on when there is any probable chance of a collision by the two steamers keeping their courses. It is not enough for the party who departs from this rule to show that they would have gone clear if each had kept its course. He must also show that the other party ought to have perceived there was no probable chance of a collision by so doing

Wheeler vs. The Eastern, 2 Curt. C. C., 141.

Where one of two approaching steamers observes the rule that he is to port helm, the burden lies on the other that departed from the rule to make out a justification.

The Washington, 3 Blachf., 276.

If the collision occurs from such other vessel not having kept her course, the obligation rests on the latter to show sufficient excuse in the particular case for the departure from the rule.

The Corsica, 9 Wall., 630.
The Chesepeake, 5 Blatchf., 411.

Where to avoid a collision between two vessels propelled by steam, one going with and the other against the tide, and it is conceded that one should stop, it is the duty of the vessel proceeding against the tide to do so, as her movements can be controlled with less difficulty than those of the other vessel.

Galatea, 92 U. S., 439.

A steamer which is bound to keep out of the way of another approaching so as to involve a risk of collision, has no right to attempt to pass to the left, unless there is an imperative necessity for it.

Studwell vs. The E. H. Coffin, 16 Blachf., 421;
Fed. Case No. 4310; 8 Reporter, 297.

ARGO CASE.

Evidence of all the witnesses for both sides tends to show the time intervening between the faulty starboard helm of the Dumois and the collision was very short.

On this point Lombard saw the lights of the Argo (red, green and white) about the same time he saw all the lights *together* of the luggers. He did not hear the Argo blow, but blew two whistles because, as he said, "I was out." (Record, page 241.) Out where if not out in the stream? After he hauled out they (the lights) appeared a little inside, and then he said, "When I first sighted them they were dead ahead." (Record, page 241.)

At page 242 he says, "I blew two whistles," the Argo answered me with one. I then blew two again to let them know that we had star-boarded our helm, immediately followed them up with a danger signal, and immediately stopped and backed my steamer.

Q. What interval was there between the repetition of these two signals?

A. It could not have been five seconds.

Q. You answered the Argo's whistles immediately?

A. Yes, sir, with two and a danger signal.

Q. What interval was there between that and the backing of the Dumois?

A. Just about two seconds. (Record, page 243.)

Q. Did you have any means of forming an opinion as to the length of time which elapsed between the blowing of your first signal and the collision?

A. Not very well, Mr. Grant.

Q. Was it a short time or a long time?

A. It was not a very long time, but there was plenty of time enough to have avoided the collision if the Argo had stopped.

Q. Could you have gotten any closer to the east bank than you were at the time you discovered the lights of the Argo?

A. Not much, no sir. (Record, page 246.)

Q. Did you observe how near the Argo was when she changed her course after the signals were given?

A. She could not have been more than two ship lengths away from us. (Record, page 247.)

Q. You saw the Argo's lights, as I understand you say, brightly?

A. I saw the lights, yes, sir.

Q. When you swung off from the east bank what were you swinging off for?

A. To clear the lights ahead of me.

Q. And how close were you to those lights when you saw them?

A. I must have been a quarter of a mile, a little more.

Q. Who saw the lights first?

A. I suppose I did; I always saw everything ahead; pretty near right ahead of there.

Q. No, I don't ask for any suppositions. I ask you whether your lookout saw them first, or you saw them first, or who saw them first?

A. I guess I saw them first.

Q. Did you see them first or were they reported to you?

A. I saw them first and they were also reported to me.

Q. Afterwards?

A. Yes, sir, afterwards.

Q. Then you were about a quarter of a mile off?

A. Yes, sir. (Record, pages 255 and 256.)

Q. What speed was the Dumois coming up the river when you discovered the lights of the Argo?

A. She must have been coming up about nine knots.

No one pretends to say the Argo changed her course until the Dumois had blown the first cross signal, and then Lombard said the Argo was not "more than two ships lengths away from us." Neither he or his lookout saw the Argo's lights, or the lights of the luggers, notwithstanding all were burning brightly until they were within "a quarter of a mile, a little more," and why did he not see them before? He might have gone closer to the bank with Dumois, but "not much, although he gave the Argo two whistles and starboarded because he says, "I was out." Out where, if not out in the stream? The speed of the Dumois was nine knots, that of the Argo eighteen and hence the vessels, if only "a quarter of a mile, a little more," apart when Lombard first saw the lights, would meet in from 33 to 35 seconds.

Sibitsen testified, the danger signals were blown at once after the two whistles and the engines were stopped and reversed. (Rec., p. 271.) Yet the Dumois had not lost her headway at the time of the collision (Rec., p. 272), and passed the Argo three or four ships' lengths, 600 feet and more, if three ships' lengths, and eight hundred feet and more if four ships' lengths. (Rec., p. 270.) In other words, the Dumois immediately after the cross signal, reversed and backed, yet she continued on her way against the current of the river, from two to three hundred yards, after the collision. If this does not indicate the vessels were only, as Lombard said, a "couple of ships' lengths away from" each other when the Dumois went on a starboard helm, and put the Argo in extreme danger, what does it indicate? If they were so close together, the time of danger of collision until the collision was very short, and would not exceed Captain Brown's estimate of the time. After the collision the Dumois went up stream so far that Sabitsen could not hear, nor does it appear anyone on the Dumois heard the crew of the Argo calling for assistance, which shows the vessels were close together when the Dumois went on a starboard helm and crossed the bows of the Argo, for if the Dumois were any considerable distance away when she starboarded and reversed, her headway would have been checked, which does not appear to have been the case. Brown says it was not over 15 seconds from the starboard helm of the Dumois until the collision. (Rec., p. 50.)

Desemes, says from the time the red light of the Dumois was shut out, and the green light appeared until the collision, not over four seconds elapsed—he only had time to *run* from the bridge of the after end of the cabin. (Rec., p. 81.)

Green came out as soon as the signals had been crossed by the Dumois, and saw "a collision was inevitable." (Rec., p. 96.)

He went aft immediately and only got to the cabin door when the shock occurred. (Rec., p. 98.) The Dumois went by like a railroad train—"She was going very fast after the collision. (Rec., p. 99.)

This evidence establishes the fact that the Dumois must have been close to the Argo when the signals were crossed and when she starboarded her helm to cross the course of the Argo, otherwise the headway of the Dumois would have been checked and she would not have gone away and disappeared in the darkness. (Rec., p. 99.)

Another thing that seems apparent is that the Dumois did not stop her engines and back, as soon as the cross or danger signals were given. If she had, her headway would have been checked, if not entirely stopped. If the Argo and the Dumois were two ships' lengths of the Dumois apart, as Lombard says, when the Argo changed her course (Rec., p. 247), the Dumois, going against the current, could have stopped, and had she done so no collision would have occurred.

Notice also that Lombard says he thought it necessary to go out to avoid the luggers tied up at the shore, while Sibitsen says they swung out for the Argo, and that they did not have to swing out to pass the luggers. (Rec., p. 273.)

It was clearly then the duty of the Dumois, as well as of the Argo, to have kept on her course, unless they were meeting end-on so as to involve risk of collision, within the meaning of Rule 18, in which event both should have put their helm to port, so that each might pass on the port side of the other. It is quite evident from the facts in this case, that if the Dumois had held her course or had put her helm slightly to port, there would have been no risk of a collision, especially in view of the fact that the Argo did port her helm and change her course to starboard. So that the divergence would have been suf-

ficient to have avoided contact. The Dumois, in crossing the signals and putting her helm to ~~port~~ starboard and seeking to cross the bows of the Argo, committed an unpardonable fault, and unless in the trying and perilous position in which she thus placed the Argo the master of the Argo did some act, or omitted to do something, which he ought not to have done which contributed to this collision, the sole fault rests with the Dumois. Surely Captain Brown, in obeying the mandate of the 18th Rule in putting his helm to port, did not commit a fault. No man can be in the wrong for obeying the law. Captain Brown had a right to asume, that though the Dumois committed the error of ~~porting~~ starboarding her helm, that the error would be at once corrected and she put upon her course up the river. He had no reason nor right to assume that the error committed would be persisted in, and we think it would have been a grievous error upon Captain Brown's part to have put his wheel to starboard and endeavored to make a starboard passage, for, had he done so, and the Dumois had corrected the error she had made, a collision would have been the inevitable result.

As was said in Hutchinson vs. The Northfield, 154 U. S., 629 (24—680): The officers of the tug also perfectly understood that under the 18th of the same rule it was their duty to keep the tug on its course. The officers of each vessel had a right to assume that the officers of the other vessel would do their duty, and to make their course and *keep their speed* upon that assumption."

Again, in The Brittania, 153 U. S., 130, the Court follows the above rule, and cites with approval The Elizabeth Jones, 112 U. S., 352, where it was said: "Conceding it to have been the duty of the Willis under the rule to keep out of the way of the Jones, it was clearly the duty of the latter not to baffle or prevent the efforts of the Willis to that end. Her departure from the rule, that

she should keep her course, cannot be justified, because there were no special circumstances for such departure necessary in order to avoid immediate danger." In Belden vs. Chase, 150 U. S., 699, it was said: "It is a settled rule in this Court, that when a vessel has committed a positive breach of the statute, she must show not only that probably her fault did not contribute to the disaster, but that it would not have done so. Obedience to the rule is not a fault, even if a different course would have prevented the collision. * * * Masters are bound to obey the rules, and entitled to rely upon the assumption that they will be obeyed, and should not be encouraged to treat the exception as subject to solicitude rather than the rules."

Again, In The Deleware, 161 U. S., 467, the Court said: "The cases of the Brittania, and Hutchinson vs. The Northfield, must be regarded as settling the law, that the preferred steamer will not be held in fault for maintaining her course *and speed*, so long as it is possible for the other to avoid her by porting, at least, in the absence of some distinct indication that she is about to fail in her duty. If the master of the preferred steamer were at liberty to speculate upon the possibility or even the probability of the approaching steamer failing to do her duty and keep out of his way, the certainty that the former will hold his course, upon which the latter has a right to rely, and which it is the very object of the rule to insure, would give place to doubts on the part of the master of the obligated steamer as to whether he would do so or not and produce a timid and feeble action on the part of both, which would bring about more collisions than it would prevent.

Belden vs. Chase, 150 U. S., 674;
The Highgate, 62 L. T., 841.

It is, however, contended by counsel that the Argo was at fault in not reversing her engines and stopping. But it

was held in The Free State, 10 Otto, 200, that "If two steamers are meeting each other end-on, or nearly so where there is plenty of sea-room, and at a considerable distance from each other, it is not the duty of either to stop, reverse or slacken. The duty of each is to pass on the port side; and the rate of speed is not an element in the case. The risk of collision is not present under such circumstances."

In the case of the Scotia, 14 Wall., 170, the Court say: "This duty of the steamer to keep out of the way, implies a correlative obligation of the ship to keep her course, and to do nothing to mislead; nor is the steamer called on to act except where she is approaching a vessel in such a direction as to involve a risk of collision. She is required to take no precautions when there is no apparent danger. Was the Scotia then in fault? We have already said that she was not bound to take any steps to avoid a collision until danger of a collision should have been apparent; and we think there was no reason for apprehension until the ship's light was seen closing in upon her. * * * It is not the law, that the steamer must change her course, or must slacken her speed the instant she comes in sight of another vessel, no matter in what direction it may be. See also, The Jesmond vs. Earl of Elgin, L. R. 4, P. C. 1; The Potomac, 13 Howard, 101."

Again, in the Northfield, supra, the Court said: "The officers of each vessel had the right to assume that the other vessel would do its duty, and to make their course *and keep their speed* upon that assumption."

This rule was approved in The Brittania, where it was held that "Where two steamers are crossing so as to involve risk of a collision, the one whose duty it is to keep her course must not interfere with or thwart the movements of the other vessel by stopping her headway, unless some exigency of obvious danger justifies her stopping."

Mr. Justice Brown stated in the case of The Delaware, 161 U. S., 459, after saying that some of the authorities go so far as to hold it the duty of the preferred steamer to stop and reverse, when a continuance of her course involves an apparent danger of collision, and that other authorities hold that the master of the preferred steamer ought not to be embarrassed by doubts as to his duty, and unless the two vessels be in extremis he is bound to hold his course and speed, says: "The cases of the Brittania and the Northfield must be regarded, however, as settling the law, that the preferred steamer will not be held in fault for maintaining her course *and speed* so long as it is possible for the other to avoid her by porting, at least in the absence of some distinct indication that she is about to fail in her duty."

Applying these well-settled rules to the case at bar, it is difficult to say where any fault can be attributed to Captain Brown. He was placed in this trying position solely through the initial fault of the Dumois in porting her helm and seeking to cross his bows. The law directed Captain Brown to port his helm. This he did. He had a right to assume, as before stated, that the Dumois would correct her error and straighten in her course, and thus allow the Argo to pass to port or to westward. He was placed in a position of extreme peril through no fault of his own, and no doubt did that which appeared to him at the time to be the safer and more proper course to take, and one which was strictly in accord with the rules of navigation. Relying upon the speed of his vessel and possibly hoping for a correction of the error on the part of the Dumois, he ported his helm and went on his course. That he miscalculated the action of the Dumois is evident. He is not held to that course of conduct which we might contemplate, viewing the transaction from our present standpoint and deliberating upon what might have been; but he is to be held by the cir-

cumstances and conditions as they appeared to him at the time he acted. And so long as he violated no law or rule of navigation he cannot be said to be in fault for not doing that which *might* by some possibility have avoided the collision.

In the act to adopt Regulations Preventing Collisions at Sea, approved August 19th, 1890, 26 Statutes at Large, 320, the following rules were enacted:

Art. 18. When two steam-vessels are meeting end-on, or nearly end-on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This article only applies to cases where vessels are meeting end-on, or nearly end-on, in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are when each of the two vessels is end-on, or nearly end-on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and, by night, to cases in which each vessel is in such a position as to see both the side lights of the other.

It does not apply by day to cases in which a vessel sees another ahead crossing her own course; or, by night, to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light or a green light without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

"Art. 19. When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

Art. 20. When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

Art. 21. Where by any of these rules one of two vessels is to keep out of the way, the other shall keep her course *and speed.*"

These rules, I take it, were adopted by Congress for the purpose of enacting into positive law those methods of procedure which had already become established and received a practical construction by mariners of the previous rules. And it will be noted that Article 21 expressly provides, "Where by any of these rules one of two vessels is to keep out of the way, the other shall keep her course and *speed.*

I submit that the decree below should be reversed, and a decree directed in favor of Mr. Springer against the Dumois for the full amount of damages sustained by the collision, without the deduction therefrom of any claim of the intervening libelants.

Respectfully submitted,

TIMOTHY E. TARSNEY,
Of Counsel.

Office Supreme Court U. S.
FILED
JAN 31 1900
JAMES H. McKENNEY,
Clerk.

No. 139 and 272.

Sup. Ct. Brf. of DeGray for Springer

Filed Jan. 31, 1900.

Supreme Court of the United States

OCTOBER TERM, 1899

No. 139.

OSCAR M. SPRINGER, LIBELLANT, PETITIONER,

versus

ANDERS JAKOBSEN, CLAIMANT, ETC.

No. 272.

ANDERS JAKOBSEN, CLAIMANT, ETC.,

versus

OSCAR M. SPRINGER, RESPONDENT.

SUPPLEMENTAL BRIEF OF SPRINGER ON PILOT RULES AND REGULATIONS.

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Supreme Court of the United States

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OSCAR M. SPRINGER, RESPONDENT.

SUPPLEMENTAL BRIEF OF SPRINGER ON PILOT RULES AND REGULATIONS.

After the facts in this case are determined, it is necessary in the discussion of the matter of fault to ascertain what pilot rules and regulations of the supervising inspectors cover the waters where this collision occurred. We have discussed both in our original brief—the former fully, and do not care to enter upon that matter again as we are satisfied with what we have already

said upon that subject, but will make brief reply to the Supplemental brief of the Dumois on the matter of what pilot rules and inspectors' regulations were controlling when this collision occurred.

The collision having taken place on January 28th, 1897, the law then in force was the Act of Congress approved February 19, 1895, Chap. 102, 28 Stat., p. 672, whose title declares it to be:

"An Act to adopt special rules for the navigation of harbors, rivers and inland navigation of the United States, except the Great Lakes and their connecting and tributary waters as far east as Montreal, supplementary to the Act of August 19, 1890, entitled 'An Act to adopt regulations for preventing collisions at sea.'"

This Act declared: that on and after March 1, 1895, the provisions of sections 4233, 4412, and 4413 of the Revised Statutes and regulations pursuant thereto should be followed on the harbors, rivers and inland waters of the United States, and the provisions of said sections of said Revised Statutes and regulations pursuant thereto, are, by said Act, declared special rules duly made by local authority relative to the navigation of harbors, rivers and inland waters as provided for in Article 30 of the Act of August 19, 1890, entitled "An Act to adopt regulations for preventing collisions at sea."

Section 4233, above referred to, contains 24 different rules, which relate to "Lights", "Fog Signals" and "Steering and Sailing Rules",—the latter from Nos. 16 to 24, both inclusive—and said latter are the only ones necessary to observe in this case. They are very plain, and are to be followed on all the harbors, rivers and inland waters of the United States, except the Great Lakes, but the regulations of the Board of Inspectors are not so plain, nor are the precise waters which they are to cover always defined. They are to be found on various pages of the Regulations of January, 1896, to-wit, pages 73 to 82; 82 to 86, and 86 to 95. Which of the various rules relate to par-

ticular localities, cannot always be determined by reading the rules themselves, but only by reading the heading of each set of rules and regulations. On page 73 are found "PILOT RULES FOR ATLANTIC AND PACIFIC INLAND WATERS", on page 82 "PILOT RULES FOR WESTERN RIVERS", and on page 86 "PILOT RULES FOR THE GREAT LAKES AND THEIR CONNECTING AND CONTRIBUTORY WATERS AS FAR EAST AS MONTREAL". Now from the heading or caption of the "PILOT RULES FOR WESTERN RIVERS" as well as from reading some of the rules that follow one would be led to conclude they were regulations that were to control the Mississippi river from its highest navigation to the Gulf of Mexico, but upon reading the last of these rules—Rule XIV.—we are clearly told the pilot rules for Western Rivers end at the lower limits of the city of New Orleans, and we are not here told what, or that any pilot rules control the river below the lower line of the limits of the city of New Orleans. And to make it appear that there are such rules for said lower river we would have to insert in said Rule XIV. after the word "and" and before the word "harbors" the words "and the pilot rules on", making said Rule XIV read, "The line dividing jurisdiction between the pilot rules of western rivers and 'the pilot rules on' harbors, rivers and inland waters at New Orleans, shall be the lower limits of the city", and would have to obliterate from the caption of the "Pilot Rules for Atlantic and Pacific Inland Waters", the language therein contained excluding from their operation the rivers emptying into the Gulf of Mexico. But here there is no reference whatever to any pilot rules or regulations covering the river below the lower limits of the city of New Orleans.

What regulations, or that there are any regulations beyond the sections of the Revised Statutes that control the Mississippi river below the lower limits of the city of New Orleans does not here appear. There may be an inference that there ought to be such regulations somewhere, but there are none, because their

jurisdiction terminates at the lower limits of said city, and when we go back to "PILOT RULES FOR ATLANTIC AND PACIFIC COAST INLAND WATERS" we gain no information or direction on this subject nor do we find any regulation covering the Mississippi river from the lower limits of the city to the sea, because the "rivers emptying into the Gulf of Mexico" (and the Mississippi river more than any other, is one so emptying) are expressly excepted from the operation from said Atlantic and Pacific rules in the following and unmistakable words:

"*Rules and regulations for the government of pilots of steamers navigating harbors, rivers, and inland waters (except the Great Lakes, the Red River of the North, and rivers emptying into the Gulf of Mexico, and their tributaries) when meeting or approaching each other, whether by day or night, and as soon as fully within sound of the steam whistle. (Adopted by the Board of Supervising Inspectors, June, 1871; amended January, 1875, 1881, 1882, 1893, 1895.)*"

It is true it is contended that this heading or caption to which we are bound to resort to ascertain where said rules are to be applied is negatived—wiped out, declared nugatory, by the three closing lines of Rule IX of said Atlantic and Pacific rules, which are in the same language as Rule XIV of the Pilot Rules for Western Waters, to-wit:

"The line dividing jurisdiction between pilot rules on Western rivers and harbors, rivers and inland waters at New Orleans, shall be the lower limits of the city."

But what is there, where is there, anything to show what rules are to control on the Mississippi river below the lower limits of the city and the sea? Certainly nothing, and the result—the clear result—is, that this part of the river is controlled solely, by section 4233 of the Revised Statutes and the steering and sailing rules therein provided.

It is clear, if the Mississippi river above the line of the lower limits of the city is controlled by Pilot Rules for Western Rivers, said rules would so say, and in fact do so say, and if said

river from said lower limits of said city to the Gulf were to be governed by the said Atlantic and Pacific rules, the latter part of Rule IX of said rules would have so declared, but in the absence of such declaration, either in the Atlantic and Pacific Rules, or in The Rules for Western Rivers, and in the teeth of the express exception in the caption of the former rules excluding all rivers emptying into the Gulf of Mexico, it is very clear that no regulations, beyond the section of the statute itself have been provided for the river below the lower limits of the city of New Orleans. In other words, the sum and substance of said Rule XIV and Rule IX is, that the Western Rules terminate at the lower limits of New Orleans, nothing more or less. There is no designation by either set of "Rules" of any line dividing the jurisdiction between two different sets of polit rules, as is contended, but only a designation of a line dividing the jurisdiction of the pilot rules of the "Western Rivers" from the "harbors, rivers and inland waters" below the lower limits of the city of New Orleans, that is from the waters of said "harbors, rivers and inland waters". In short, the designated line is the lower limit of the pilot rules of the Western Rivers and the beginning of "harbors, rivers and inland waters" below New Orleans, and not the beginning of any pilot rules for such waters.

The assertion that the Supervising Inspectors never intended to exempt from their jurisdiction the waters stretching from the Gulf of Mexico to the city of New Orleans is of no force, for the inquiry here is, not what they intended, but whether or not they have provided any regulations covering these waters. They undoubtedly had the right,—they had the jurisdiction to provide regulations for these waters, but it is very clear they have not attempted to exercise such right.

Nor does the action of the Secretary of the Treasury in defining the line dividing the river, harbors and inland waters of the Mississippi river from the sea, settle the question as to

whether the Rules of the Atlantic and Pacific inland waters have any force between the lower limits of New Orleans and the sea, because it merely settles one thing, to-wit: it defines the line which divides the high sea from rivers, harbors and inland waters, and nothing more. It is true, that under the terms of the statute, the rivers, harbors and inland waters being above the line dividing them from the high seas, are to be subject to Sections 4233, 4412 and 4413 and the regulations pusuant thereto, but the question here is, are there, any regulations of the Supervising Inspectors pursuant to said sections of said Revised Statutes covering the portion of the river in question? Surely not. For as we have already shown, said Inspectors have never attempted to do more than to define the line, or point, where the Pilot Rules of Western Rivers end, and where the waters of "harbors, rivers and inland waters" begin, either by Rule XIV of said Western Waters or by the last paragraph of Rule IX of said Atlantic and Pacific Rules, for the language of each is the same.

The preamble or caption of the Atlantic and Pacific Rules is not in conflict with the latter part of said Rule IX, because the latter does not directly or by implication propose to enlarge or extend the operation of said rules for the "rivers, harbors and inland waters" of the Mississippi river, but only defines the boundary line between the pilot rules of the Western Waters and the "rivers, harbors and inland waters" at New Orleans, without saying what or that any Inspectors' regulations are to control said river, harbor or inland waters below the limits of New Orleans to the high seas.

The result is, that there were no pilot rules covering the waters of the Mississippi river, "at the time of this collision," below New Orleans, except those provided in section 4233 of the Revised Statutes.

Respectfully submitted,

RICHARD DEGRAY.

Proctor for O. W. Springer

APPENDIX.

CHAP. 102—An Act to adopt special rules for the navigation of harbors, rivers and inland waters of the United States, except the Great Lakes and their connecting and tributary waters as far east as Montreal, supplementary to the Act of August nineteenth, eighteen hundred and ninety, entitled "An Act to adopt regulations for preventing collisions at sea."

Be it enacted &c., That on and after March first, eighteen hundred and ninety-five, the provisions of sections forty-two hundred and thirty-three, forty-four hundred and twelve, and forty-four hundred and thirteen of the Revised Statutes and regulations pursuant thereto shall be followed on the harbors, rivers and inland waters of the United States.

The provisions of said sections of the Revised Statutes and regulations pursuant thereto are hereby declared special rules duly made by local authority relative to the navigation of harbors, rivers and inland waters as provided for in Article thirty, of the Act of August nineteenth, eighteen hundred and ninety, entitled, "An Act to adopt regulations for preventing collisions at sea."

SEC. 2. The Secretary of the Treasury is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with light houses, light vessels, buoys or coast objects, the lines dividing the high seas from rivers, harbors and inland waters.

SEC. 3. Collectors or other chief officers of the customs shall require all sail vessels to be furnished with proper signal lights.

Every such vessel that shall be navigated without complying with the Statutes of the United States, or the regulations that may be lawfully made thereunder, shall be liable to a penalty of two hundred dollars, one-half to go to the informer; for which sum the vessel so navigated shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.

SEC. 4. The words "inland waters" used in this Act shall not be held to include the Great Lakes and their connecting and tributary waters as far east as Montreal;

and this Act shall not in any respect modify or affect the provisions of the Act entitled "An Act to regulate navigation of the Great Lakes and their connecting and tributary waters," approved February eighth, eighteen hundred and ninety-five. [*February 19, 1895.*]

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1899.

No. ——

ANDERS JAKOBSEN, CLAIMANT OF NORWEGIAN STEAMSHIP ALBERT DUMOIS, *Appellant*,

versus

OSCAR M. SPRINGER ET ALS., *Appellees*.

No. 272.

OSCAR M. SPRINGER, *Appellant*,

versus

ANDERS JAKOBSEN, CLAIMANT, *Appellee*.

No. 139.

BRIEF ON BEHALF OF ANDERS JAKOBSEN, APPELLANT.

STATEMENT.

The collision, which is the ground of action in this case, took place eighty miles below the city of New Orleans, between the Argo, a fast steam yacht, 110 feet long and six feet draught, and the Norwegian steamship Albert

Dumois, a slow freight vessel, 210 feet long and 17 feet draught, engaged in the fruit trade between New Orleans and Port Limon, Costa Rica.

The Argo was chartered by representatives of the *Daily Picayune*, and left this city at 7 o'clock P. M., January 27, 1897, for a trip to the Jetties, having on board James Brown, as master; Robert S. Orkney, engineer; Isaac Broadhurst, fireman; E. C. Green, cook; Charles A. Desseamus, deckhand, and H. P. Hester and Faurie B. de Blesine, reporters for the *Picayune*, who shipped as part of the crew, the yacht being shorthanded.

The Dumois entered the river, on a voyage from Port Limon, Costa Rica, to New Orleans, about 10 o'clock P. M., having on board William M. Lumbard, a licensed pilot; a master and first and second mate, engineers and a full crew.

Both vessels arrived at a point near the New Canal, eighty miles below the city, about 12:30 A. M., the Argo descending near the east bank at a speed of eighteen or twenty miles an hour, and the Dumois ascending, also near the east bank, at a speed of nine miles an hour, and when signals were first exchanged for passing they were about half a mile apart, "head and head," the Argo, however, being a little on the starboard of the Dumois. The night was clear, but dark, and a bitter cold wind was blowing across the river from east to west. The tug Day Dream, with a tow of two or three luggers, at this time was just coming into the landing, about 200 feet below the canal, on the east bank, for the purpose of lying by for the night. The Argo came down very close to the tug and luggers and saluted them with one whistle when just above them and again as she passed them. After the Argo had passed them, and as soon as her lights came in view and could be distinguished, the Dumois gave two blasts of her whistle, indicating that she would starboard and pass the Argo on the right, it being impossible for her

to port her helm without going into the bank, or running into the tug and luggers, just ahead, and unsafe to keep her course in the face of the Argo, which was rapidly approaching, "head and head," without indicating her intention to change her own course. Immediately after the Dumois changed her course, so that her red port light was shut out, the Argo answered her signal with one whistle, and put her helm hard aport, still keeping her speed, Captain Brown, believing, as he says, that his vessel was so fast he could safely cross ahead of the Dumois. Supposing that his first signal had not been heard, or, if heard, had been misunderstood, the pilot of the Dumois immediately repeated his signal, and gave the danger signal of three whistles and reversed and backed; but before her headway could be fully stopped the Argo came in collision, striking the Dumois at right angles about ten feet aft the stem. After the vessels separated the Argo's engines, which had stopped from the shock, were started up and her head pointed to the west bank, with the intention of beaching her, but she sunk in four or five minutes, carrying down Hester and Blesine, who lost their lives, and became herself a total loss.

The appellees, as we understand it, dispute this statement of fact on two material points only, asserting, first, that the Argo was coming down in her proper place in the middle of the river, when the two vessels first exchanged signals, and second, that the Argo blew the first whistle, which the Dumois crossed.

The District Court found, but without giving any opinion, that the Dumois was solely in fault, and awarded $11,000 damages for the loss of the Argo; $5000 to the widow and minor child of Hester; $2500 to the mother of Blesine and $315 for the personal effects of the crew.

The case was taken to the Court of Appeals by the

claimant of the Dumois on the following assignment of errors (Rec., p. 311):

1. That the Court erred in finding the steamship Albert Dumois in fault for the collision, under the evidence, and in awarding damages against her in favor of the libellant and intervenors.

2. The Court erred in not finding that the steam yacht Argo was solely in fault for the collision, and so decreeing.

3. The Court should have found, and the Court erred in not finding, as matter of fact and law from the evidence, that the Argo was in fault for said collision, in the following particulars:

(*A*) In being so constructed as to be incapable of reversing her engines, backing and stopping, when it might become necessary for her to do so under the rules of navigation.

(*B*) In being insufficiently officered and manned, and not keeping a proper lookout.

(*C*) In being out of her proper place in the river and invading the course of the Dumois, which was ascending on the east bank, and in running at an excessive, dangerous and reckless speed at and before the time of collision, and in not attempting to stop to prevent a collision.

(*D*) In not recognizing the right of the Dumois to starboard her helm at the time she did, for the purpose of clearing the tug Day Dream and luggers, lying on the east bank of the river, directly ahead, and governing herself accordingly.

(*E*) In neglecting to comply with her own signals, when she first gave one blast of her whistle, and afterward tardily porting and attempting to cross ahead of the Dumois, thereby directly causing the collision, when she might have avoided it by stopping, by keeping her course, or by starboarding her helm.

4. The Court erred in not finding as matter of fact and law, from all the evidence, that the Dumois was ascending

the river in her proper course near the east bank, and that the Argo was descending the river out of her proper place, head on, or nearly so, to the Dumois, when the two vessels first exchanged signals for passing.

5. The Court erred in finding the Dumois in fault in starboarding her helm at the time she did, for the purpose of clearing the said tug and luggers, then lying on the east bank of the river, ahead of her.

6. The Court erred in finding that the Dumois was in fault in not porting her helm to pass the Argo.

7. The damages awarded against the Dumois are excessive, and exceed the losses suffered by the libellant and intervenors by one-half, whether the Dumois was wholly or only partly in fault (Rec., p. 311).

Oscar M. Springer filed a cross appeal, alleging as sole error that the District Court should have awarded $15,000 as the value of the Argo, with interest from January 28, 1897 (Rec., p. 317), instead of $11,000.

The Court of Appeals reversed the degree of the District Court, increased the value of the Argo from $11,000 to $15,000 dollars, found both vessels in fault, and divided the damages (Rec., p. 331).

The case comes to this Court on writs of certiorari sued out by both Springer and Jakobson, and, under the order of this Court, entered when the writ was allowed on the petition of Jakobson, his appeal is to be heard with that of Springer upon the same record.

We complain that the Circuit Court of Appeals erred in the following particulars:

1. In not finding that said collision was caused solely by the fault of the yacht Argo, as established by the evidence; and in not discharging the steamship Albert Dumois from all liability for such collision;

2. In not holding that Blesine and Hester, under the uncontradicted evidence, were members of the crew of the

yacht Argo at the time they were killed, and as such partook of the fault of their vessel;

3. In fixing the value of the yacht Argo at $15,000, when the fact is she was not worth more than $9000 at the time of her loss.

Oscar M. Springer complains that the Court of Appeals erred: (1) Because it holds the Argo mutually in fault with the Dumois in causing said collision; (2) Because it found that the claimant of the Dumois is entitled to deduct one-half of what he is adjudged to pay Mrs. Hester and Mrs. Blesine from the half damages first decreed to him as the half value of the Argo; (3) Because said decree does not increase the value of the Argo to at least $20,000; (4) In case the above should be found untenable, then he complains that there was nothing for said Court of Appeals to base its decree upon, as there were no facts found by the District Court.

As the appeal of Jakobsen is to be heard with that of Springer, the paging noted in this brief may be taken to refer to the record printed in the appeal of the latter.

II.

The Pleadings.

The steamship Dumois was seized under a warrant issued on the libel of Oscar M. Springer, the alleged owner of the Argo (Rec., p. 1). After answering to the libel, Anders Jakobsen, claimant and owner of the Dumois, filed a petition in the cause (afterward amended, Rec., p. 25), claiming the benefit of Secs. 4283, 4284, 4285 of the United States Revised Statutes, limiting the liability of vessel owners in cases of collision to the value of the vessel and pending freight. The Dumois and pending freight were valued at $31,133.73, and the vessel was released pursuant to law on a bond for this amount.

The petition as amended (Rec., p. 25) avers that on the

night of January 27, 1897, the Dumois was proceeding up the river, close to the east bank, at the moderate speed of nine miles an hour, when at a point about eighty miles below the city, her lookout, pilot and mate discovered the lights of a steamer coming down, also close to the east bank, "head and head," but somewhat on the starboard of the Dumois; that immediately upon discovering the lights of the steamer (which subsequently proved to be the Argo), and before any signal had been given by the Argo, the Dumois gave two clear and distinct blasts of her steam whistle, indicating that she would pass the Argo starboard to starboard; that the Argo answered with one whistle, crossing her signal; that fearing his first signal had not been heard, or if heard had been misunderstood, the pilot of the Dumois immediately repeated the signal, and at once gave the danger signal and reversed her engines and backed; that the Argo, in disregard of her duty, neglected to stop her engine and back, and kept her speed and course, until her pilot saw the green, or starboard light of the Dumois, when he attempted to pass ahead of her, by putting his helm hard aport, which brought the Argo in collision with the steamship, striking her ten feet aft of the stem, from which collision the Argo sank and became a total loss.

The petition further alleges that the Argo carried no masthead light, but that the two colored lights were placed on each side of the pilot-house, and the white light forward, on the same level, and but a few feet above the water, which arrangement was unusual, and gave the lights the appearance of being farther off than they really were; that owing to this position of the lights, the Argo was not visible until she had cleared the Day Dream and luggers, which were coming to a landing on the east bank, about half a mile distant above, and that the steamship, at the time she first signaled, was compelled to pull out from the bank to clear them, as she could not safely go between

them and the bank, or go closer to the bank, which the pilot of the Argo must have known, as he had just passed them.

The petition further alleges that the Argo was at the time on the east side of the river, out of the proper course of descending vessels, and was running at the dangerous and excessive speed of eighteen or twenty miles an hour, and that her sudden appearance, after clearing the tug and luggers, put the steamship in extreme peril, and that her pilot was compelled to take instant action to avoid a collision; but that the pilot of the Argo made no effort whatever to prevent the collision, although he could have done so at any time after the signals were exchanged by stopping the engine of the Argo and backing, or by keeping his course, or by putting his wheel to starboard.

The petition further avers that at the time the Argo began her voyage, and at the time of the collision, she was not sufficiently officered and manned, the only deck officer on board being James Brown, who was compelled to act as pilot, mate, wheelman and lookout, and could not and did not give proper attention to the navigation of his vessel; and that Hester and Blesine, who lost their lives by the collision, were shipped as part of the crew of the Argo.

The petition prays the benefit of the limited liability law, and for a decree exonerating the Dumois, and rejecting all claims for damages on account of the collision; but that in case both vessels are found in fault, that the damage suffered by the Dumois from the collision may be allowed as an offset against any award in favor of Springer; and further, that if full damages shall be given against the Dumois in favor of the crew of the Argo for their effects, and in favor of the heirs of Blesine and Hester, that Springer be decreed liable to pay one-half thereof, to be deducted from any amount awarded him for the loss of the Argo.

Mrs. Blesine has filed a libel *in personam* against the owners of the Dumois, claiming $10,000 damages for loss of her son (Rec., p. 12), but after the petition for the benefit of limited liability was filed her libel by agreement was consolidated (Rec., p. 16). The crew of the Argo also filed an intervention, claiming $319.20 for the loss of personal effects (Rec., p. 5).

Mrs. Hester came into the consolidated cause and propounded a claim on behalf of herself and minor child for $10,000 for the loss of her husband (Rec., p. 30).

The case was then tried, practically, upon the petition of the owner of the Dumois, claiming the benefit of the limited liability law, and the answers of these several libellants to that petition.

The libel of Mrs. Blesine, treated under stipulation as an answer to said petition, avers that while the Argo was more than a mile distant in the middle of the river, her master, who was also a pilot, first noticed the Dumois ascending on the east bank, and waited for her to signal, but finding that she did not do so, blew one whistle, indicating that he would keep his course and pass to starboard; that the Dumois came on for some time without replying, and then blew two whistles—crossing the signal of the Argo—to which the master of the Argo, she being the descending vessel, having least control of herself, and having the right of way, immediately replied with one whistle, and put her helm hard aport; that at the time, or, immediately after the crossing of the Argo's signal, the Dumois changed her course, swung across the river with great rapidity in the direction of the Argo, and when she arrived within two hundred feet blew the danger signal of three whistles, but continued on her course, until the Argo struck her.

In explanation and excuse for the conduct of the master of the Argo, the following averment is made (Rec., p. 14):

"Fourth—That said Argo was a very fast vessel, and when descending said river in the middle thereof, and observing said ascending steamer on the left bank thereof, was making fully eighteen miles per hour, and the courses on which steamers were proceeding were fully half a mile apart, and there was not the least danger of a collision had said ascending steamer kept her course, as she was bound to do, and as the master of Argo believed, and had a right to believe, she would do, until said ascending steamer crossed the signals of said Argo as aforesaid, *when, owing to the speed with which the latter was proceeding, and the fact that she was built for speeding forward and not backward, and could not be backed until her wheel—which was making 200 revolutions per minute—had stopped, and her engine reversed, when her ability to back against the strong current then running in the river was very slight* (*all of which was well known to the master of said Argo*), said master's judgment at the time of the crossing his signals as aforesaid was that it was best for him to continue his speed to get the better control of his vessel, port his helm and pass wide to the right of said ascending steamer, but which, owing to the speed of said ascending steamer, had not been stopped, he failed to do so, but struck her on her port bow as aforesaid."

The libel concludes by charging general fault on the part of the Dumois, without specifying any particular wrongful act.

Mrs. Hester makes, substantially, the same averments in her intervention and claim (Rec., p. 30).

Oscar M. Springer, in his answer (Rec., p. 36) avers that at the time the two vessels first exchanged signals the Argo was in her proper place in the middle of the river, and that the Dumois was ascending in her proper place, about 450 feet from the east bank, and that while the vessels were about three-quarters of a mile apart the master of the Argo noticed the red and white lights of the

Dumois; that when the Dumois arrived at a point about half a mile distant, and before she had given any signal, the Argo gave one blast of her whistle, indicating that she would keep her course and pass to the right; that the Dumois answered with two whistles, and commenced crossing the river and the course of the Argo, shutting out her red light and showing her green light, and that thereupon the helm of the Argo was put hard aport. In explanation of this movement (which was the immediate cause of the collision), the answer avers that "*the judgment of her master and pilot was that the very best thing he could do was, owing to the speed with which she was passing through the water and with the current, and the slight ability of the Argo to stop and back, which could not be accomplished in less than ten minutes, to put his helm hard aport, and proceed with all possible speed, and pass in front of said Dumois, which would have been accomplished had said Dumois, even after wrongfully crossing the signal and course of said Argo, stopped when she blew her danger signal*" (Rec., p. 36).

But in the libel filed the morning after the collision while the facts were fresh in the minds of the parties, it is alleged that the Dumois replied to the first signal of the Argo with two whistles, to which the Argo responded with one, and that the Dumois then altered her course and blew three whistles (danger signal).

Thus the libel distinctly admits that the Dumois replied to the second whistle of the Argo with the danger signal, but that the Argo did not change her course; while the answer alleges that the Dumois answered the Argo with two whistles, and immediately commenced crossing the river, and that thereupon the Argo ported and the Dumois then blew the danger signal. Such repugnance in pleading necessarily casts a cloud over the case attempted to be established by the libellant.

II.

The Law and the Evidence.

It is admitted by the pleadings of the libellant and of those who have propounded claims against the Dumois, that the Argo was so constructed as to be incapable of stopping when under full speed, as she was at the time of the collision, in less than ten minutes after reversing. Steaming at the rate of eighteen miles an hour she would go three miles before she could possibly stop. A craft so constructed and propelled being incapable of complying with the rules of navigation, is, we submit, practically an outlaw and a menace to commerce. Fault in this respect is of the same character and quite as serious as neglect to provide proper steering gear, lights and means of giving signals. Strange to say, this very defect in the Argo is given as an excuse by the master for not attempting to check her speed, and for his conduct in taking the desperate risk of attempting to pass ahead of the Dumois instead of reversing and stopping when the danger of the collision became apparent, as required by the rules of navigation.

The employment of such a vessel in commerce, even if permitted, should at least be conducted with the greatest skill and prudence, and navigated at a moderate speed, especially in the waters crowded with ships engaged in commerce on the Mississippi river between the great port of New Orleans and the sea. But considering that the Argo was without the necessary power to stop within a reasonable time; that the night was dark; that she was descending the river on the east bank, invading the course of ascending vessels, practically without a lookout, a speed of eighteen miles an hour was certainly excessive, dangerous and criminally reckless. What is or what is not a safe rate of speed has not been fixed by statute or the rules of navigation, but the following rule has been laid

down by this Court for all steam vessels in the case of the Pennsylvannia, 19 Wall. 125: "This may be safely laid down as a rule on all occasions, fog or clear, light or dark, that no steamer has a right to navigate at such a rate that it is impossible for her to prevent damage, taking all precautions the moment she sees danger to be possible; and if she can not do that without going less than five knots an hour, then she is bound to go less than five knots an hour."

The Syracuse, 9 Wall., 672.

Morgan vs. Stebbins, 10 H., 606.

McCready vs. Goldsmith, 18 H. 79.

Steamboat New York vs. Rea, 18 H. 233.

What would be a moderate speed for a vessel having power to control herself whenever required by an emergency, would be imprudent and reckless on the part of one having little or no power to stop and back.

State of Alabama, 17 F. R. 847.

If the Argo were in extremis, as claimed, when her master ported and attempted to cross ahead of the Dumois, when he ought to have reversed and checked her speed, or kept his course, or starboarded, any one of which movements would have avoided a collision, she was placed in this situation solely because she was going, to the knowledge of the master, at a reckless rate of speed, without power to stop. It was no doubt the speed of the vessel and the want of power to stop acting on the mind of the master which influenced him to port his helm and attempt to pass ahead of the Dumois, for he says that at the speed he was going it was his judgment that this was the proper course to take.

These faults were aggravated by the fact that Captain Brown was acting as master, pilot, helmsman and lookout, on a vessel requiring the utmost skill and vigilance to navigate safely. His attention was necessarily distracted by these numerous duties, rendering it impossible for him

to understand as clearly as he should the signals, the situation, and movements of an approaching vessel, and at the same time to navigate his own, especially in the night time, when objects are more or less dim and indistinct. It is true, he had a man, Charles Desseamus, a common deckhand, standing by him at the wheel, who, he says, acted as lookout. But this man, as Captain Brown says, was there to attend to the lights and to do errands, as well as to keep a lookout (Rec., p. 66), and he was not stationed forward, where he ought to have been. In his testimony this man says that when the Dumois first came in sight he told Captain Brown that he saw a vessel coming up, but he did not report her bearings, or the lights he saw (Rec., pp. 80-86), as he would have done, and ought to have done, if he had been in fact a proper lookout. He was practically a mere servant of the master, and of no assistance whatever as lookout. The truth is the Argo was shorthanded, at the beginning of the voyage, and committed a fraud on the law by taking two newspaper reporters, who performed no duty, as seamen. This, no doubt, accounts for the fact that there was no proper lookout on the Argo at the time of the collision.

These facts, which are either expressly admitted by the pleadings of the libellant and intervenors, or undisputed, show the character and conduct of the Argo just previous to the collision.

On the other hand, it appears from the pleadings of the libellant and the undisputed evidence, that the Dumois on the night of the collision was coming up the river close to the east bank, in her proper place, at a moderate speed, fully manned and equipped, all three lights burning brightly, with a regular lookout properly stationed on the bow, a seaman at the wheel, and a licensed pilot and the second mate on the bridge in charge of her navigation, keeping a vigilant watch.

The only matters of few in dispute, outside of the question

of the amount of damages, relate, 1st. To the situation of the Argo in the river at the time signals for passing were first exchanged; and 2d. What was done by the respective vessels to avoid a collision.

It is alleged by the libellant and intervenors that at the time the two vessels first came in sight of each other and exchanged signals the Argo was in the middle of the river in the customary and proper place for a descending vessel. We admit that her proper place was in the middle of the river, but assert that she was not there, but was, in fact, wrongfully descending close to the east bank, in the course of ascending vessels, contrary to law and usage. The evidence, as usual, in cases of this character, is conflicting; but we think your Honors, upon a brief review of the testimony, will find, as the Court of Appeals did, that she was where we place her—close to the east bank. The witnesses examined are those on board the respective vessels, and others who were on shore, or on the luggers at anchor near the new canal, just above the place of collision. Beginning with the officers and crew of the Dumois, we will now give a brief resumé of their testimony:

William Lumbard, licensed pilot in charge of the Dumois, being asked "Where was the Albert Dumois at the time you discovered the lights of the Argo?" answered, "She was just below the canal, a distance of a quarter or a half a mile, near the east bank of the river." Question—"Did you see the side lights and the white lights of the Argo?" Answer—"I saw her three lights, the red, green and the white lights." Question—"How far were you from the east bank when you blew the first whistle?" Answer—"I should judge about the ship's length" (Rec., pp. 240–241).

Question—"State whether you saw all three lights of the Argo dead ahead or otherwise?" Answer—"They were dead ahead; if anything, a little inside of us" (Rec., p. 242).

Nicholas Sibitsev second mate of the Dumois, who was on the bridge when the collision took place, being asked, "Where was the Dumois in the river when the lights of the Argo were first discovered," says, "She was close to the east bank." Being asked, "When you first saw the Argo's lights did you see all three at the same time?" says, "Yes, sir; they were dead ahead, a little inside of us, nearer the bank" (Rec., pp. 258, 259). On cross-examination he says, "The Dumois might have been the ship's length from the bank, say 210 feet" (Rec., p. 265).

Bernt Larsen, able seaman, says he was at the wheel of the Dumois when the collision took place, but not when the first signals were exchanged, being on the forward deck coiling a rope. He took the wheel after the Dumois gave the first signal, and it was then lying starboard, and the Dumois swung out from the bank—the Argo was then on her starboard (Rec., pp. 296–297).

Nicholas Theodore, an old river pilot who was on the tug Day Dream, tied up on the east bank of the river with a number of luggers, just above the New Canal, being asked how close the Argo came to him as she passed down, says, "She came so near he could see her color, and he was afraid she would run into him." Being asked, "Could you form an opinion as to how many feet off she was?" says, "I couldn't swear how many feet, I knew she was not the length of my boat, 109 feet" (Rec., pp. 225–226).

The crew of the Argo testify as follows:

Edwin C. Green, an experienced seaman, acting as cook, called by the libellant (Rec., p. 95), being asked what whistle he heard just prior to the collision, says, "The first whistle I heard was the Argo; she blew one whistle, which was responded to with two whistles—the Argo blew again, and was answered with two and then three short whistles."

Being asked what lights he saw on the approaching

steamer, he says, "I saw them all, the high light, I saw both the red and green lights" (Rec., p. 97). On cross-examination, being asked where he was when he heard the first signal from the Argo, says, "I was sitting by the stove in the galley" (Rec., p. 101). Being asked whether he went on deck and looked around when he heard the first signal. says, "I went on the steps and looked out; I had a view all around the river ahead of me; I saw the three lights when I first went out, then went back to put some coal in the stove" (Rec., p. 102). Just as he raised the lid of the stove he heard the alleged cross-signal of the Dumois, and looking out again saw only the green and white lights of the Dumois. It thus appears that before either vessel had changed her course they were *head and head*, both necessarily near the East bank of the river and the suggestion of counsel for libellant that this witness did not see the lights of the Dumois until she had starboarded for helm and changed her course is entirely without support.

Capt. James Brown, pilot, and *Charles Desseamus*, deckhand on the Argo, both say their vessel was in the middle of the river, and that they saw only the white and red lights of the Dumois when signals were first exchanged.

Robert Orkney, engineer of the Argo (Rec., p. 67), who came on deck and looked around while she was passing the Day Dream and luggers, being asked, "How far she was from these vessels," says, "I guess we must have been about in the middle of the river, because we were so far away. I could make out it was a tow by the lights, but couldn't see the vessel at all" (Rec., p. 69). But he was not on deck when the vessels first signaled after passing the tug and luggers, and does not pretend to know where his vessel then was. And coming up out of a lighted engine room, it is not at all strange that he could not very well see, but had to guess at the position of the Argo.

The evidence of the witnesses on the luggers examined by libellant is as follows:

Captain Jurich, master of the lugger *Admiral Takeit-off*, lying outside of the Day Dream, 50 feet from the bank (Rec. p. 90), says he saw the Argo coming down, and being asked where she was in the river, says, "I would'nt swear, but I think she was coming right in the middle of the river, a little more to the east it may be, a little more" (Rec. p. 91.) He admits that he did not notice what happened after the Argo passed him, and does not state where the vessels were when signals were exchanged (Rec., p. 94.)

Nicholas Dedes, pilot on the Day Dream (Rec., p. 148), says the tug was about making a landing with a lugger which had got adrift when he heard the Argo blow one whistle, and that the Dumois was then coming up just behind the tug, hugging the shore (Rec., p. 149), and answered with two whistles. He refers to the sketch at Rec., p. 157, showing the position of the two vessels before and at the time of the collision. He places the collision in the middle of the rive, "just abreast of the Day Dream, right opposite her" (Rec., p. 151.)

Being asked whether the Argo blew a whistle opposite the Day Dream, he says she was not quite opposite, and explaining his want of accuracy, he says: "I didn't pay any attention to that boat all the time. I wasn't taking notice of that boat at all" (Rec., p. 154). Being asked, when he saw the green light on the Dumois, he says: "After she blew two whistles and after the Argo blew one, and some other boat answered with two, that made me go on the port side of the boat, and then I saw the green light on the boat coming up" (Rec., p. 156).

Previously the witness was engaged in making his vessel fast. Being asked: "When you heard the Argo whistle and saw her coming down the river, you were in the pilots-house?" the witness says; "I was on the star-

board side." Q. "And you looked up the river?" A. "No, sir; I was looking on the bank. When I heard the whistle blow I looked up. I was just making a landing and my attention was drawn to the whistle" (Rec., p. 155).

In substance this witness says that when he heard the whistle of the Argo he was behind the pilot-house of the Day Dream, looking landward, while making her fast, and that he did not go to the other or port side and look around until he heard the *second* signal of the Dumois, which was given about the time of the collision, and that previous to this he gave no attention to the two whistles, having been distracted by the work of making the tug fast.

The sketch made by him, showing the supposed situation of the vessels prior to the collision, is purely fanciful and imaginary. Indeed, a mere casual reading of his deposition as a whole will show that he does not pretend to say where the Argo was when she passed the Day Dream. His silence on this point comes from his confessed ignorance. It is only by inference from the suggestions embodied in the questions of counsel for libellant propounded to him that he adopts the sketch at all as part of his evidence. For instance, counsel put the question, "Here is a boat (referring to the sketch) with a circle around the side of it, with the figure 1 on it—what do you take that to be; what boat do you call that?" "I suppose it was the Dumois." Question. "Here is No. 6 boat, what what would you take that to be, No. 6 coming down the rtver? Would you take that to be the Argo coming down?" Ans. "The only boat coming down was the Argo." It is doubtful whether he saw any of the occurrencies testified to, or whether he understood them if he saw them; for he locates the collision opposite the Day Dream, whereas it is conceded all around that the Argo delayed ten or fifteen seconds after passing the Day Dream

before giving her first signal. and that it was some seconds before she ported after the Dumois answered. The two vessels being half a mile apart when signals were exchanged, the Argo must have gone at least 1600 feet below the Day Dream before she could collide with the Dumois, coming up stream at half her speed.

If this point in dispute is to be decided according to the number of witnesses who have testified, the preponderance is clearly in favor of the Dumois. It appears from the affirmative evidence of Lumbard, Sibitsen and Larsen, viewing the incidents from the deck of the Dumois, and Green, viewing them from the deck of the Argo, that the lights of vessels were in full view to each when signals were first exchanged, which, probably, is the best possible proof that the Argo was descending near the east bank of the river, as it is conceded by everybody that the Dumois was close to that bank. It further appears from the evidence of Nicholas Theodore, master, who was on the Day Dream, that when she passed that tug she came down within less than 100 feet of him. As Lumbard and Sibitsen were giving their undivided attention to the signals, situation and movements of the two vessels, their knowledge of what took place must be more accurate than that of Brown, whose attention was necessarily distracted by his numerous duties, or that of Desseamus, the pretended lookout, who was at the same time acting as messenger, servant and lamp-trimmer, besides being a person of infinitely less experience and intelligence than Lumbard and Sibitsen.

The other witness, Robert S. Orkney, engineer of the Argo, was below in the engine-room when he heard the first signal of the Argo, and only came up after the vessels had changed their courses. Of the witnesses on the luggers, Dedes was behind the pilot-house, looking landward and engaged in making fast the tug when the Argo

passed him, and did not go around to the port side and look until after the Dumois blew two whistles. He admits that he paid no attention to what was going on, and does not say where the Argo was prior to the collision, except from inference in his answer to questions which attempted to put words in his mouth favorable to libellant's views. Jurich not only differs with all the other witnesses as to the signals exchanged, as we shall show in another part of this brief, but places the Argo east of the middle of the river. Nicholas Theodore, master of the tug, who was standing in the pilot-house and observed all that took place, says positively that the Argo came within 50 feet of him, which would be 100 feet from the east bank.

We have then Lumbard, Sibitsen, Green, Larsen and Theodore, who testify particularly that the Argo came down close to the east bank, against Brown and Desseamus, who affirm that she was in the middle of the river, and Orkney and Dedes, who did not see anything until about the time of the collision and merely guess at the prior situation, and Jurich who favors *our* views. Of these ten witnesses six of the most intelligent affirm the Argo was close to the east bank, head and head to the Dumois when signals were first exchanged, while four, two of whom saw nothing until the collision took place, testify to the contrary.

It is a significant circumstance in this connection that the Argo signaled the Day Dream once just above, and again as she got opposite her, indicating that she came so close to the Day Dream that Captain Brown considered it necessary to warn that vessel of his approach, which he would not have done if the Argo had been out in the middle of the river. But the most conclusive proof that the Argo was descending on the east bank of the river, "head and head" to the Dumois, is the fact that a collision was physically impossible if the Argo had been in the middle of the river and the Dumois within 400 or 500 feet of the

east bank when signals were first exchanged, as is alleged by Springer in his answer and testified to by some of the witnesses. The river at the place of collision, as shown by the map in evidence, is about 2450 feet wide, and the vessels were about half a mile apart at the time the signals were given. For all practical purposes the manœuvres took place in a section of the river 2500 feet square. Triangulating this square it will appear that the hypothenuse is about 3500 feet long, and crosses a line bisecting the square in the middle of the river at a distance of about 1750 feet from the east bank. To reach the point where the courses of the two vessels would cross, if the vessels were located as contended for, the Argo would travel 1250 feet in a direct line, and the Dumois, if even 500 feet from the east bank, would travel 1250 feet going up stream, as she was at an angle of 45 degrees. The Argo, therefore, going at the rate of 18 miles an hour directly down steam, would have gone 2500 feet before the Dumois could reach the crossing of the two courses. But Springer and the intervenors allege in their pleadings that as soon as the Dumois starboarded and shut out her red or port light the Argo put her helm hard aport. Both vessels would thus start for the middle of the river about the same time. It is manifest, therefore, that if the Argo had kept her course, as she did her speed, after these signals were exchanged, she would have passed the intersection of the two courses, in the middle of the river, before the Dumois could reach it, and gone half a mile below. On the other hand, if she were, in fact, in the middle of the river as claimed, when she ported her helm, she would have gone into the west bank before the Dumois could reach midstream. In this situation the result would have been the same if both vessels were running at the same rate of speed. All evidence, therefore, which attempts to locate the Argo in the middle of the river at the time signals were first exchanged must be rejected, which leaves

the testimony of the Dumois' witnesses undisputed, for otherwise there is no reliable proof as to the position of the Argo in the river.

It seems clear to us that the vessels must have been "head and head" to each other at the time they both started toward the middle of the river, and that the Argo, having delayed porting for fifteen or twenty seconds after the Dumois swung out, overtook and crossed her course at some point between the east bank and mid-stream.

In attempting to show how it was possible for vessels to come together with the Argo in the middle of the river, as it is claimed she was, and the Dumois close to the east bank, when their courses were changed, the astonishing proposition is advanced by counsel for libellant that as soon as the Dumois swung out from the bank the strong wind blowing from the east on her starboard beam doubled her speed, while the Argo descending with the current of the river was impeded by the wind and current beating against her stern after she ported. It may be that head winds and adverse currents increase the speed of vessels sailing against them, and that the speed of vessels sailing with the wind and current is impeded; but it is rather significant that a fact so contrary to natural laws has not been established by a single witness, or by reference to any printed book on the subject of navigation.

Some support to the contention that the Argo was in the middle of the river is sought to be drawn from the claim that her wreck has been located by a man named Buras, about 500 feet from the west bank of the river. This witness claims to have fished up a piece of rope and a door from the wreck (Rec., p. 109). The rope, it is claimed, was attached to the bow and stem, showing the vessels to have been about sixty feet long; but as the Argo was 110 feet long the identity of the wreck is not apparent. However this may be, the presence of the wreck at

the place is accounted for by the evidence of Robert S. Orkney.

He says that after the collision the life-boat of the Argo was put in the water, and he passed the painter to Captain Brown, and went below and started the engines, at the captain's suggestion, for the purpose of beaching her. She was headed toward the west shore. Being asked whether the Argo continued down the stream, he said, "We couldn't tell. She was pointed toward the bank when I went down to start her up the second time." Q. "She didn't stop from that time until you got off of her?" A. "No, sir, she was still going like a hog rooting" (Rec., p. 76). The small boat remained by her about three minutes after the collision, and during this time she was pointed toward the west bank with her engines running (Rec., p. 77). This accounts for her presence near the west bank, if she has been found there.

III.

Let us now consider what was done by the respective vessels to avoid a collision:

The Dumois, it is conceded, was ascending the river close to the east bank, in her proper place, at the time the Argo cleared the tug Day Dream and luggers, which were coming to a landing just below the New Canal. Until the Argo had so cleared her lights were mixed up with those of the tug and luggers, so that the pilot and mate of the Dumois were uncertain whether she was coming down or intended to make a landing with the other vessels, as all the lights appeared to be moving. These lights were mixed together, because those of the Argo were placed very low, the white light being on a level with the red and green, instead of being elevated above them, as is customary.

But as soon as the lights of the Argo came out and it could be seen that she was coming down the river, the

Dumois signaled her with two blasts of her whistle, indicating that she would pass on the starboard. The Argo answered with one whistle, and the Dumois replied with two, and immediately gave the alarm, reversed and backed. This is affirmed positively by Lumbard, the pilot (Rec., p. 341), Sibitsen, the mate (Rec., 259), Lund, the seaman at the wheel (Rec., p. 291), and Larsen (Rec., p. 296). All these witnesses say the signal of the Dumois preceded that of the Argo.

The evidence of the witnesses for libellant is contradictory and inconsistent.

Captain Brown says he signaled the Day Dream with one whistle as he passed her, and then she answered with one; that five or six seconds after he passed the Day Dream he saw the lights of the Dumois coming up half a mile below, and blew one blast of his whistle, which the Dumois answered with two, and he then saw she had starboarded her helm, and after waiting 15 seconds he repeated his whistle, and at once ported his helm (Rec., pp. 49–58). He denies that the Dumois answered his second signal, but admits that she gave the danger signal and reversed. Just here the collision occurred as the direct result of his porting. He admits that the engines of the Dumois had been stopped before the vessels struck (Rec., pp. 50, 51). He says he first saw the lights of the Dumois when she was three-quarters of a mile away, but delayed giving a signal until the Argo had passed the tug and luggers and the vessels were half a mile apart, because he was waiting for the Dumois to blow first (Rec., p. 57). On cross-examination, he says he thus delayed because he understood the rule to be for the ascending vessel to blow first (Rec., p. 57). He did not change his course, as his signal indicated he had done, but waited, as he admits, 15 seconds, and only ported after he saw the red light of the Dumois disappear and the green come out, thus steering directly for her. Being asked why he did

not sound the alarm, reverse and back when he saw the green light of the Dumois, he says he made sure, owing to the velocity at which he was going, that he could clear her (Rec., pp. 58, 64, 65); that this was his judgment as to what should be done under the circumstances.

Orkney, who was in the engine-room of the Argo, testifies, on cross-examination, to having heard only a single whistle from the Argo to the Day Dream, and that a few minutes afterward he heard a second whistle by the Argo, and then heard the cross signal of the Dumois, and that the Argo blew again, and the Dumois then blew the toot whistle, and the collision followed (Rec., pp. 74, 75).

Desseamus says that he and Captain Brown both saw the red and white lights of a steamer (the Dumois) when the vessels were three quarters of a mile apart; that Captain Brown waited for the Dumois to blow, but as she did not do so, he blew one blast of his whistle; that about 12 or 15 seconds after he got an answer of two whistles, and then Captain Brown immediately blew again, but got no answer; then the collision (Rec. p. 83). On cross-examination, he tells a different story. He says he first saw the lights of the Dumois 15 seconds or a minute after the Argo saluted the Day Dream.

Edwin C. Green says he heard first a signal whistle of the Argo, and a response of two whistles, and then another whistle from the Argo, and a response of two whistles, followed by the alarm (Rec. p. 96); but he does not testify to having heard the signals given by the Day Dream.

Captain Jurich heard the Argo give one whistle for the Day Dream, but heard no answer; then after a little while heard four whistles, then saw the little boat hit the big one. (Rec. p. 91.)

This witness being recalled (Rec., pp. 107-8), says the Argo blew one whistle for the Day Dream, then she blew

four for the steamer, which the steamer answered with four.

Nicholas Dedes says the Argo blew one whistle when 150 yards above the Day Dream, which the Day Dream answered; then another opposite the Day Dream, then he heard two which the Argo answered with one; then the Dumois answered with the danger signal and the Argo answered with the danger signal (Rec., pp. 149, 153-54).

Nicholas Theodore says the Argo blew one whistle for the Day Dream, and she answered, and then blew another, but he didn't know whether she was blowing for him or for some one else. He heard no whistle from the vessel coming up (Rec., pp. 224-6).

This evident confusion in the minds of the witnesses who have testified in regard to the signals from the standpoint of the Argo, completely destroys the value of libellant's evidence in this respect. It is more than probable that the whistles of the Argo and Day Dream were weak, as is usual on small vessels, or were not blown very loud, and for this reason were not heard by the Dumois, but that Captain Brown heard the signal of the Dumois just after he whistled to the tug, and thought in the confusion of the moment that his signal had been crossed, certainly the evidence of Lumbard and Sibitsen and those on board the Dumois, whose hearing was not distracted by these numerous whistles, and who were giving undivided attention to what took place, ought to be conclusive as to which vessel gave the first signal.

Summing up the claims as to what was done by the respective vessels to avoid a collision, it appears, (1) according to the story of Captain Brown, that he first discovered the Dumois when he was some distance above the tug Day Dream and luggers; that he signaled the tug once above, and again when opposite her, with one whistle, and was answered with one whistle; that after he

passed her, five or six seconds, he blew one whistle for the Dumois (but did not port in compliance with his one signal); that the Dumois replied with two whistles and starboarded her helm; that when he saw her change her course, her red light dissappearing and the green coming out, he blew one whistle again and put his helm hard aport; that there was an interval of fifteen seconds between his first and second signal, during which he kept his course and speed before porting. (2) According to the statement of Lumbard, the pilot, and Sibitsen, the mate, the Dumois gave the first signal and starboarded, but upon receiving a cross signal from the Argo, repeated his whistles, and followed it immediately by the alarm signal, and reversed and backed.

She thus did what this Court expressly sanctioned in The Victory and Plymothean, 168 U. S., 410—stopped her engines and backed. The Argo did nothing but port, and go directly for her at full speed.

The evidence given by the master of the Argo in defence of his conduct is: 1st. That his vessel was in her proper place in the middle of the river at the time signals were first exchanged, far away on the port side of the Dumois, which justified him in not porting when he blew his first whistle. This we have shown to be untrue. 2d. That he did not reverse and stop when the Dumois crossed his signal and danger became apparent, because the Argo was built for speeding forward and had so little power to back that she could not be stopped inside of ten minutes (three miles). 3rd. That he ported when the Dumois changed her course, because in his judgment he thought that on account of the great velocity at which she was going the Argo could pass ahead of the Dumois, and that if he committed an error in taking this course, it was committed in the extremis, caused by the fault of the Dumois. Conceding the existence of the facts upon which these excuses are predicated, and judging him upon

his own acts, he was clearly guilty of the grossest fault in not reversing and backing the moment his signal was crossed and the danger of a collision became apparent, as required by the 21st rule, Sec. 4233, U. S. R. S., independent of any fault on the part of the other vessel. But it is perfectly clear that it was the inability of the Argo to comply with this duty on account of her construction and the great speed at which she was going, and not the conduct of the other vessel, which caused the error of judgment now pretended to have been occasioned by the extreme peril of the moment.

We submit that the whole situation of peril, according to conceded facts, was brought about by the primary fault of the Argo in going down the river in the night so near the east bank of the river, out of her proper place, at a reckless rate of speed, without possessing the requisite power to stop, as required by the rules of navigation in a situation involving the danger of collision with other vessels. A vessel navigating at such a tremendous speed should at least have a lookout, a man at the wheel, and a competent officer in command on deck, who should give his undivided attention to her navigation, even when in her proper place.

It is alleged in the pleadings, and admitted by all the parties to the case, that the vessels were within half a mile of each other when their respective lights became visible, which would bring them together in about sixty seconds at the rate of speed they were running. The Dumois was coming up within about the ship's length from the east bank, with the tug Day Dream and several luggers coming to a landing just above, with their lights moving, which warned her to give them a wide berth. In this situation, brought about solely by the Argo, she was compelled to act on the instant. Unable to port her helm without grounding or running into the tug and luggers, the pilot starboarded and swung out from the bank, giving notice

of the movement by the proper signal. While it is true that vessels meeting end on are required by Rule 18, U. S. R. S. 4233, to port, Rule 24 provides that "in construing and obeying rules due regard should be had to all dangers of navigation, and to any special circumstances which may exist in any particular case, rendering a departure from them necessary in order to avoid immediate danger." The circumstances here referred to have been held to be a rock, a bar, or a third vessel.

The Maggie J. Smith, 123 U. S. 349.

Besides complying with the special rule every vessel is subjected to the paramount duty to avoid a collision in any situation, if possible.

The master of the Argo, having just passed the tug and luggers, must have known that the Dumois would be compelled to make the movement she did on account of these very circumstances, and was clearly in fault in not governing herself accordingly. But we submit that the course taken by the Dumois, if erroneous, was caused by the situation brought about by the gross faults of the Argo, which we have enumerated above. The Court of Appeals found the Dumois partly in fault because in executing the movement to avoid the tug and luggers, she then had the Argo on her starboard, and was required in this situation to keep out of her way. If the fifth situation applies to vessels meeting head on, as the Court of Appeals seemed to think, but which we doubt, as in terms it applies only to vessels approaching obliquely, then it was the clear duty of the Argo to keep her speed and course, in which case there would have been no collision. Instead of doing this, she tardily ported and changed her course, which was the sole cause of the accident.

The Britannia, 153 U. S., 130.

The master of the Argo seems to have acted on the theory that having on board some newspaper reporters who were chasing up a Congressional Committee on board

the steamship Whitney, that he was in some way privileged with the right of way, and had the right to run his craft anywhere in the river, with the speed of a limited express train, and that every vessel was bound to get out of his way.

IV.

The case of the Argo has been argued on the theory that the Dumois was the first to make a departure from the rules of navigation, and that for this reason the Court should not consider the fault of the Argo, however flagrant. No such principle has ever been, or can be, sanctioned by the Admiralty Courts, for it would eliminate from our jurisprudence the whole doctrine of contributory negligence in collision cases, as from the very nature of this class of accidents one of the vessels must necessarily commit the initial error. As this Court said in The America, 92 U. S., 432, " Not even flagrant fault on the part of one vessel will authorize the other to run her down, nor excuse the other from adopting every proper measure to prevent an accident."

Not only is this laid down a rule by the Courts, but the statute enacted for the purpose of preventing collisions equally imposes duties on both vessels, and prescribes a rule of conduct for both whenever the danger of a collision becomes apparent, without regard to the manner in which the situation of peril may have been brought about, or which vessel may have made the first departure from the rules—each is required to slack her speed, and, if necessary, to stop. Rule 21, R. S., Sec. 4233.

We have taken pains to examine the numerous cases where damages have been divided, but in none of them does the Court recognize the rule contended for by appellant.

In Chamberlain vs. Ward, 21 H. 564, the Court held the propeller in fault (1), because the propeller had not a

competent officer on deck; (2), because she did not have bright signal lights; (3), because she did not change her course after discovering the lights of the other vessel. The Court held the steamboat in fault (1), because she did not sooner discover the character of the propeller, notwithstanding she failed to exhibit side lights; (2), because she did not seasonably change her course and stop her engines, so as to avoid a collision, until all reasonable expectation of avoiding it was gone, and then ported; (3), because she did not have a vigilant and competent lookout, the second mate having had charge of the general management of the vessel, as well as charge of the deck.

It was contended on behalf of the steamboat that the propeller, being first in fault for not carrying proper lights, should be charged with the whole loss; but the Court divided the damages.

In Rogers vs. Steamer St. Charles, 19 H. 108, the Court held a schooner at anchor in a narrow channel in fault for not constantly exhibiting a white masthead light, and a steamer was also in fault in passing through the channel at too great a rate of speed.

In Schooner Catherine vs. Dickensen, 17 H. 170, two sailing vessels were held mutually in fault because the one close-hauled, luffed previous to the collision when she should have kept her course, and the one having the wind free did not have a proper lookout. Notwithstanding that the luffing vessel was the first in fault, the damages were divided.

In the Sapphire, 11 Wall. 164, vessels at anchor near each other were held mutually in fault because one did not put out an extra anchor in a storm, and the other for not hoisting a jib during a storm.

In the Ariadne, 13 Wall. 475, a brig was held in fault for not keeping her lights burning brightly, and a steamer for not keeping a sufficient lookout, and the damages divided. Here it was held that it was the duty of the

steamer to stop and slow her engines to avoid a collision, notwithstanding the first fault in the brig's lights.

In the Continental, 14 Wall., 345, each steamer was held in fault, one for not carrying the side lights required by law, the other for not sooner discovering the character of the first and taking steps to avoid a collision. A steam vessel has no right to assume that another steam vessel, owing to the absence of lights she should carry, is a sailing vessel and run her down.

In Atlee vs. Packet Co., 21 Wall. 389, the Court held the owner of a pier, because erected in the river without authority of law, in fault, and also a vessel colliding with it in fault because the pilot did not use proper diligence to discover it. Here the primary fault was that of the party who erected the pier.

In the case of The Pennsylvania, 19 Wall. 126, cited to show that in case a vessel has committed a positive breach of a statute, she must show not only that probably her fault did not contribute to the disaster, but that it could not do so, it appeared that the steamer was running at an excessive rate of speed in a fog in violation of law, and that the sailing vessel used a bell in place of a fog-horn prescribed by law, and the Court held both in fault, because neither could show that her individual fault did not contribute to the collision.

In the Teutonia, 23 Wall. 77, both steamers were held in fault for the collision in the night where neither took any steps to avoid it, after they had failed to come to an agreement as to passing.

In the Sunnyside, 91 U. S. 208. This was a collision between a steam tug and a sailing vessel. The former was lying three miles off shore, near the head of St. Clair river, with her machinery stopped, waiting for a tow, as is customary. She had the lights of a steamer under way. The lookout on the sailing vessel reported the light to the officer of the deck who replied that the steamer could

take care of herself, and paid no further attention to the matter until it was too late to avoid a collision. Neither vessel did anything. But the Court found both in fault, holding that both had a duty to perform independent of the light; that the neglect of one did not excuse the neglect of the other to adopt measures necessary to avoid collision, citing Steamship vs. Rumball, 21 H. 383, and Chamberlain vs. Ward, Ibid 568.

In the America, 92 U. S. 432, the Court held that steam vessels meeting head on, so as to involve the risk of collision, in absence of special construction, must both port seasonably, so as to prevent a collision, and that this duty equally rests on each vessel, and that even flagrant fault on the part of one will not authorize the other to run her down, nor excuse the other from adopting every proper measure to prevent an accident, and divided the damages.

In the Stephen Morgan, 94 U. S. 599, a sailing vessel and a steamer collided. The sailing vessel altered her course twice, and the steamer failed to keep out of her way. Both were held in fault.

In the Manitoba, 122 U. S. 97, both vessels were held in fault—the Comet, because she threw herself across the course of the Manitoba, and the Manitoba, because she failed to slow down and stop.

In the case of Belden vs. Chose, 150 U. S. 699, the two steam vessels were approaching each other in the Hudson river at night, head and head. One gave a short blast of the whistle to pass to the right, the other answered by a similar blast, and then gave two whistles and changed her course so as to cross the bow of the first. (But the question of mutual fault was not passed on, being a writ of error to Court of Appeals of New York.)

In the Britannia, 153 U. S. 130, both vessels were held in fault, the Britannia because she came so close to Governor's Island in coming into East river that she could not

bring herself quickly enough on her proper course to clear the Beaconsfield, and the Beaconsfield because as the preferred vessel she did not keep her course and speed, as required by the rule governing vessels in the fifth position.

The most that the Court has ever said on the question is found in the case of the Maggie J. Smith, in whom it is said that where one vessel has put the other in a position of danger by a wrong manœuvre, the Court will not examine to see whether the other has exercised the highest degree of skill in her management. But we submit that these remarks are entirely applicable to the Argo, which first committed the most flagrant faults in being without power to stop in the presence of danger, and in going down the river in the night time in the course of ascending vessels, at a reckless rate of speed, without a proper lookout, and in not porting her helm when she blew her first signal, and in tardily porting after she claims her signal was crossed, instead of checking her speed and stopping. Indeed, her reckless speed and inability to stop seems to be her only excuse for adopting a course which caused the collision. It was the primary fault of the Argo which brought about the position of peril. They afford ample excuse for any error of judgment on the part of the officers of the Dumois, but none to those of the Argo whose gross faults were the sole cause of the situation.

V.

As to the Value of the Argo:

The general rule, no doubt, is that it is the market value of the vessel at the place of the collision, and not the special value to the owner, that is to be considered in assessing damages in cases of collision. Leonard vs. Whitwill, 19 F. R. 547.

The Argo was built in 1878 by the Herreshoff Com-

pany, in Rhode Island, the contract price being $18,000. J. B. and N. G. Herreshoff and C. W. Young (Rec., p. 302), members of the company, say she would depreciate by age since then from 33 to 50 per cent., notwithstanding she may have been kept in repair, or partly rebuilt.

S. S. Delano (Rec., p. 131), one of the libellant's witnesses, says she was sold by the original owners in 1884 to the Gros Point Navigation Company for $10,744.63.

E. H. Gillman (Rec., p. 135), another witness for libellant, says she was sold by that company for $7000 or $9000, but was then worth $12,000.

Thos. E. Miller (Rec., p. 144), who repaired her in 1893 and 1895 at an expense of $5924, puts her value then at $20,000, though he says he has had no experience in selling boats.

The libellant, Springer (Rec., p. 198), says he bought her in 1895, after finding she was in perfect repair and condition, for $2500, and that just before the collision he sold half of her to one Bagley for $7500. But he had previously offered her, as he says, and Hon. T. M. Miller testifies (Rec., p. 238) for $11,000.

D. M. Cochran (Rec., p. 142), who examined her for Springer before he purchased her, valued her then at $18,000, and so does F. E. Tarsney (Rec., p. 124), a lawyer.

Babcock (Rec., p. 139) says she was repaired in 1893 at a cost of $10,000 and was then worth $17,000.

Frank Huettman (Rec., p. 121), who never built or bought a boat, values her at $25,000.

Capt. T. J. Woodward (Rec., p. 276), of Woodward, Wight & Co., who has had great experience, values her at between $8000 and $9000.

Springer himself says he bought her for $2500 (Rec., p. 198), but places her value at $20,000 (Rec., p. 195).

While the market value is the test, we think it can be

more accurately arrived at by adding together the amount of the several sales actually made and negotiated and getting an average.

Price of sale to Gros Point Company.....	$10,644
Price of sale by Gros Point Company, say.....	8,500
Price of sale to Springer	2,500
Sale to Bagley.....	15,000
	4)36,640
	$9,160

While counsel for libellant insists that the Court should adopt the price said to have been agreed to be paid by Bagley for a one-half interest in the Argo, as a basis of value, he at the same time contended that the prices previously paid by the different purchasers when she was younger and more valuable should not be considered. But it seems to us that if the price agreed to be paid by Bagley is evidence of value, that actually paid for the vessel by Springer ($2500) two years previous, after she was, as is claimed, rebuilt and made better than new, is entitled to much greater weight. The Court can not shut its eyes to the fact that such crafts as the Argo have no fixed commercial value, and that they constantly depreciate in value with age. Besides this, pleasure yachts soon become obsolete, and are cast aside for new models which take their place in the fickle fancy of those rich people who can afford to own them. No better evidence could have been introduced in this aspect of the case than that of the builders of the Argo, John B. and Nathan G. Herreshoff, the most eminent builders of this class of vessels in the United States. The first of the above named witnesses says, "Age depreciates the value of all vessels, and in a vessel of the Leila's (now the Argo) age, the depreciation would probably be from one-third to one-half the original value. We find in practice that the depreciation would

take place no matter if the boat has been renewed in part, either by rebuilding the hull or by replacing machinery." (Rec. p. 303).

"The element of speed is an item, but does not add to the selling value as much as is generally supposed. The other elements are comfort and safety." (Rec., p. 304).

N. G. Herreshoff says that "a yacht like the Leila (Argo) would depreciate in 19 years at least 33 per cent. notwithstanding repairs and renewal. The probability is that nine out of ten vessels reaching the age of 19 or 20 years would not be worth one-third of their original cost" (Rec., p. 306). As none of libellant's witnesses pretend to know the first cost of such a craft as the Argo, their evidence is entitled to no consideration as opposed to that of these eminent experts. It seems perfectly clear that the Court of Appeals erred in disregarding this, the most competent evidence on the question of value, and in reverting to the price of a single alleged sale as the measure of damages.

Interest was not allowed Springer, either by the District Court or by the Court of Appeals; but without assigning error in this respect on the present appeal, he prays that interest be decreed by this Court from the date of the collision.

But the action of the Court of Appeals, can not, we submit, be reviewed here in the absence of an assignment of error as to this ruling; nor is it subject to review, as the allowance of interest on damages in cases of this character is not a matter of right, but rests in the discretion of the lower court.

The Scotland, 118 U. S. 518.

Moreover, interest was not claimed or prayed for by Springer in his libel, and the Court of Appeals was not called upon to exercise its discretionary power, and can not, therefore, be charged with error for refusing to allow interest as part of his damages.

Whether the judgment of the Court of Appeals carries with it interest as a right, where it does not expressly provide for interest is a different question. If it does, the omission of such a provision is not material. But there seems to be no statute of the United States on the subject except Sec. 966 U. S. Revised Statutes, which provides that "Interest shall be allowed on all judgments in *civil causes* recovered in a Circuit or District Court, in all cases when by the law of the State in which the Court is held, interest may be levied under process of execution on judgments recovered in the courts of such State; and it shall be calculated from the date of the judgment at such rate as is allowed by law on judgments recovered in the courts of such State." But it is to be observed that this statute is, by its terms, confined to civil causes, and does not extend to cases in admiralty, as to which interest is governed by a different rule.

Hemmenway vs. Fisher, 20 H. 255.

But if this section of the Revised Statutes can be held to apply to the cases in Admiralty, there is no statute of the State of Louisiana allowing interest on monied judgments. Indeed, Article 553 of the Code of Practice declares that "interest shall not be allowed by the judgments unless the same has been expressly claimed." Hence the rule is firmly established in that State "that interest can not be collected on a judgment for money, which, by its terms, is silent as to interest."

Succession of Anderson, 33 La. An. 581.

As judgments of the Federal Courts do not carry interest under the common law (Mass. Ben. Ass'n vs. Miles, 137 U. S., 689), and the statutes of the State of Louisiana give none, it is only when cases come to this Court on appeal that the question can be dealt with. Here clause 4 of Rule 23 provides that in cases in Admiralty "interest shall not be allowed unless specially directed by this Court.

This rule was no doubt adopted in view of the fact that decrees in Admiralty cases do not bear interest unless so decreed by the Lower Court in the exercise of its discretion, or allowed by this Court in view of some special circumstance which may appeal to its sense of equity.

Washington & Georgetown Railroad vs. Harmon, 147 U. S. 571.

Interest is given on money demanded as damages for delay in payment, and where it is expressly reserved in the contract it is part of the debt and is recoverable as of right; but when given as damages it is often matter of discretion. In the latter case it may be and is decreed in necessary instances.

Redfield vs. Iron, 110 U. S. 174.

It has been often allowed by this Court as damages in cases where appeals and writs of error have been taken for delay. But we find no instance where a party has been allowed interest under this rule in a case where he has delayed the execution of a judgment recovered by him by an appeal, as he has here.

The delay in this case having been caused by Springer's own action, which has deprived the judgment debtor of the power to pay, there is no ground upon which to base a decree for the allowance of interest by way of damages for that delay.

As has been decreed by this Court, "Whenever interest is allowed either by statute or by common law, except in cases where there has been a contract to pay, interest is allowed for the delay or defiance of the debtor."

United States vs. Sherman, 98 U. S. 567.

This question does not affect Mrs. Hester, Mrs. Blesine and the members of the crew of the Argo, none of whom have appealed, and, therefore, no interest can be allowed them in any event.

VI.

As to Measure of Damages for Loss of Life.

It is settled, at least in the Admiralty Courts, that the deceased had no right of action for their own suffering, which they could transmit under C. C, 2315, as their deaths were practically instantaneous.

The Corsair, 145 U. S. 336.

Mrs. Hester must, therefore, recover on her own behalf and that of the minor child for loss of support under the last clause of that article as amended (Acts 1884, p. 94): "The survivors above mentioned may also recover the damages sustained by them by the death of the parent, or child, or husband, or wife, as the case may be."

Mrs. Blesine's claim rests on C. C. 245, and this is based on the loss of the right to demand alimony of her deceased son. The amount of alimony is regulated by the wants of the person requiring it and the circumstances of those who must pay it, and the obligation may be satisfied by obligor taking the obligee into his house. C. C. 230 to 235.

The right is manifestly less valuable than that of the wife and minor child for the loss of support.

In some of the States the value of a life is fixed by statute, as follows: Illinois, Minnesota, New Hampshire, New York, West Virginia and Wisconsin, $5000; Colorado, from $3000 to $5000; Connecticut, Maine and Massachusetts, from $500 to $5000; Kansas, Utah and Ohio, $10,000.

But the Supreme Court of the State of Louisiana, whose decisions must be held to control in all cases arising here, in the absence of a statute, allows much less, as will be seen from the following cases:

27 An. 713, child for death of mother.....$2,500
39 An. 1011, mother and minors for death of father 5,000

44 An. 692, father for death of son..... 2,000
42 An. 114, father for death of son..... 2,500
42 An. 824, father and mother for death of child.. 250
43 An. 63, father and mother for death of child.... 1,000
37 An. 630, father for death of son..... 1,000
37 An. 650, father for death of son..... 1,100
35 An. 699, mother and children for death of father 2,500
41 An. 964, father for death of son..... 2,000
40 An. 178, widow and minors for death of father 3,000
46 An. 1543, father for death of son..... 1,000
46 An. 185, mother and child for death of father.. 3,000
47 An. 1391, father for death of child..... 1,500
49 An. 86, father and mother for death of child... 2,500
48 An. 1047, father and mother for death of child.. 1,800

Under these decisions the Court seems to have allowed the wife and children from $2500 to $3000; and the father and mother from $1000 to $2000 for loss of support.

VII.

The Court of Appeals did not err in allowing the claimant of the Dumois to recoup one-half the damages allowed for the loss of life, and for the personal effects of the crew, against the amount recovered by Springer, if both vessels were in fault, notwithstanding that the Argo was a total loss. This point is disposed of by the cases of the North Star, 106 U. S. 17, and the Chattahoochee, 173 U. S. 540.

The Court of Appeals allowed the crew of the Argo only one-half of the value of their personal effects lost in the collision, on the theory that they partook of the fault of their vessel. Whether the Court erred in this respect, however, is not material, as they have not appealed and can not claim any relief in this proceeding.

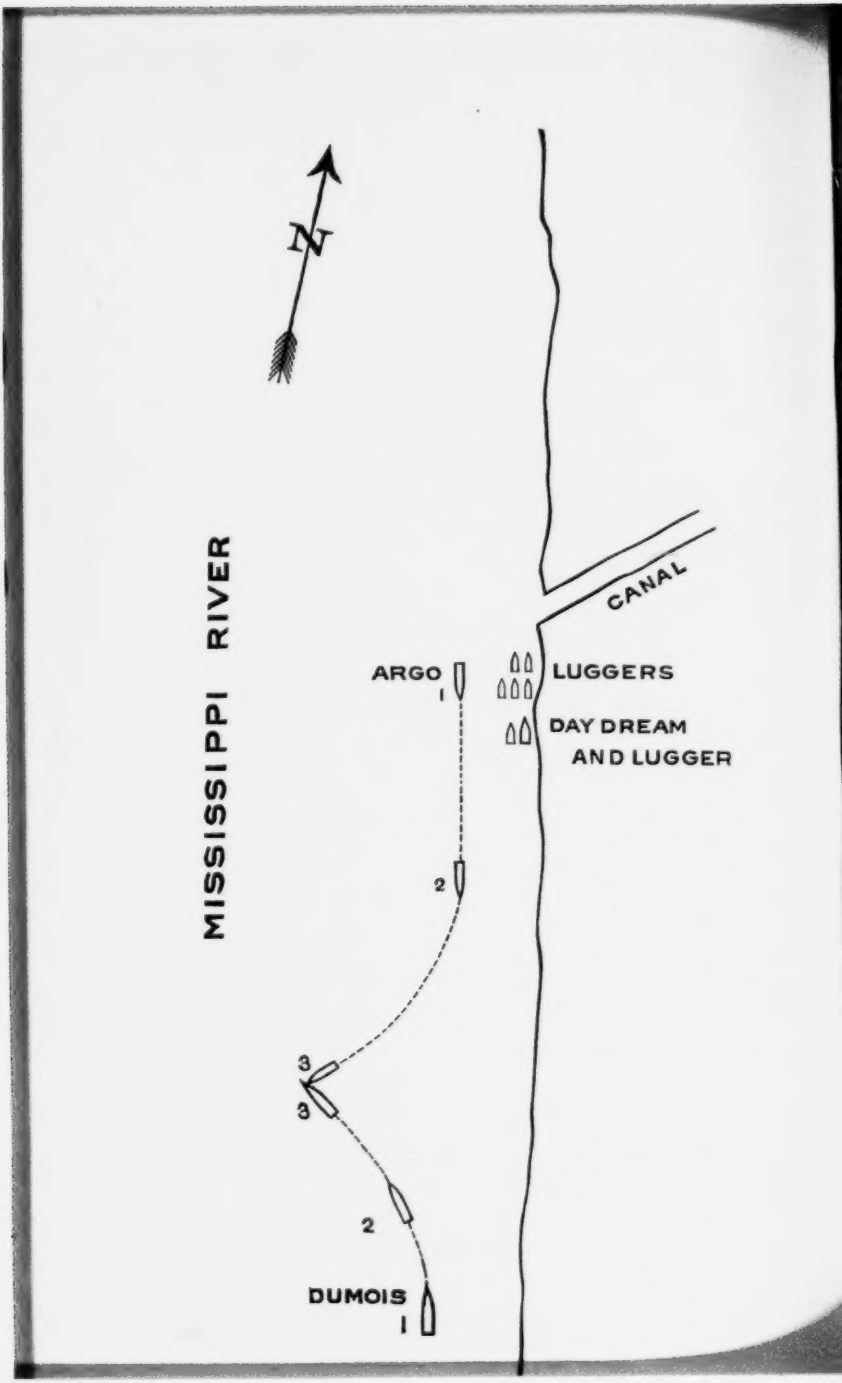
In conclusion, we submit that the decree of the District

Court and the Circuit Court of Appeals should be reversed and set aside; and that a decree be now entered, or directed to be entered by the said Court or Courts, in favor of Anders Jakobson, claimant of the steamship Albert Dumois, dismissing the libels and claims of Oscar M. Springer, Mrs. Harrison P. Hester, tutrix, etc., and Mrs. Marie Bourgeois DeBlesine, and of the crew of the yacht Argo, with costs, and appellant so prays.

Repectfully submitted,

JOHN D. ROUSE,
WILLIAM GRANT,

Proctors for Anders Jakobson, Claimant and Appellant.


N
MISSISSIPPI RIVER
CANAL
ARGO
1
LUGGERS
DAY DREAM
AND LUGGER
2
3
3
2
DUMOIS
1

Supreme Court of the United States,

OCTOBER TERM, 1899.

OSCAR M. SPRINGER, *Libellant, Petitioner,* *against* ANDERS JAKOBSEN, Claimant of the Norwegian steamship ALBERT DUMOIS.	No. 139.
ANDERS JAKOBSEN, Claimant of the Norwegian steamship ALBERT DUMOIS, *Petitioner,* *against* OSCAR M. SPRINGER and others, *Respondents.*	No. 272.

SUPPLEMENTAL BRIEF ON BEHALF OF THE ALBERT DUMOIS.

First.

The collision occurred in the Mississippi River, about eighty miles below New Orleans, in the early morning of January 28, 1897, between the steamship *Albert Dumois* and the steam yacht *Argo*.

The navigation of the two steamers was, therefore, by virtue of the Act of February 19, 1895 (28 *U. S. Statutes at Large*, 672), governed by the Congressional Rules and Regulations of April 29, 1864, reproduced in the United States Revised Statutes, § 4233, and by such regulations of the Supervising Inspectors, made under § 4412, as were applicable to the waters.

It is asserted by the counsel for the *Argo* in his brief (*p.* 61), that the particular waters in which the collision occurred had been exempted from the operation of any regulations of the Supervising Inspectors. In this assertion he appears to be mistaken.

The Supervising Inspectors had three sets of regulations extant in January, 1891, which had generally been in force subject to occasional amendments since 1871.

These regulations were commonly designated:

A. Pilot Rules for Atlantic and Pacific Coast inland waters.

B. Pilot Rules for Western Rivers.

C. Pilot Rules for the Great Lakes and for connecting and tributary waters.

The first mentioned set of rules was headed:

> " Rules and regulations for the government of " pilots of steamers navigating harbors, rivers and " inland waters (except the Great Lakes, the " Red River of the North, and rivers emptying " into the Gulf of Mexico, and their tributaries) " when meeting or approaching each other, whether " by day or night, and as soon as fully within sound " of the steam whistle."
>
> *Edition of* 1896, *p.* 73.

The second set of rules was headed:

> " Rules and regulations for the government of " pilots on steamers navigating the Red River of " the North, and rivers whose waters flow into the " Gulf of Mexico and their tributaries."
>
> *Edition of* 1896, *p.* 82.

The third set of rules clearly was confined to the Great Lakes and their connecting waters, and admittedly are not relevant to in this case.

Edition of 1896, *p.* 86.

The caption of the second set of rules—the Pilot Rules for Western Rivers—would lead the careless reader to assume that the rules were applicable to any collision in the Mississippi River. And it is rather an odd circumstance that the master of the *Argo*, at least for some weeks after the collision, and up to the time he gave his deposition, believed that he was subject to those rules (*Brown, pp.* 53, 57). It is clear, however. that they were not applicable, the special waters between New Orleans and the Gulf of Mexico being eliminated by the concluding rule:

> " Rule XIV: ' The line dividing jurisdiction be-
> " tween the pilot rules on Western rivers and har-
> " bors, rivers and inland waters at New Orleans,
> " shall be the lower limits of the city."
>
> *Edition of* 1896, *p.* 85.

The counsel for the *Argo* is therefore correct in his assertion that the Pilot Rules for Western Rivers were not applicable.

We contend, however, that the first set of rules, to wit: the Pilot Rules for Atlantic and Pacific Coast Inland Waters was applicable.

While it is true that the caption of such rules appears to except " rivers emptying into the Gulf of Mexico" from those " harbors, rivers and inland waters" for which the rules were promulgated, the text of the rules makes it clear that they covered the Mississippi from the Gulf as far as the southern limit of the City of New Orleans.

The closing paragraph of Rule IX, reads:

> " The line dividing jurisdiction between the pilot
> " rules on the Western rivers and harbors, rivers
> " and inland waters at New Orleans, shall be the
> " lower limits of the city."
>
> *Edition of* 1896, *p.* 75.

Thus it appears that the second set of rules, to wit, Pilot Rules for Western Rivers, were applicable to the waters of the Mississippi only above the lower limits of the city of New Orleans, while the first set of rules, to wit, Pilot Rules for Atlantic and Pacific Coast Inland Waters, covered the waters of the Mississippi below the lower limits of New Orleans, in which waters this collision occurred.

Certainly the Supervising Inspectors never intended to exempt from their jurisdiction the important waters stretching from the Gulf of Mexico to New Orleans, one hundred and fifty miles in length, and anything but a cursory reading of their regulations shows that they have, in fact, provided for those waters.

Their action in designating and defining a line "dividing jurisdiction" between two sets of their regulations, necessitates the conclusion that they have provided for one side of the line by one set of regulations and for the other side of the line by the other set.

The action of the Secretary of the Treasury in designating and defining (28 *U. S. Statutes at Large*, 672) a line outside the mouth of the Mississippi to divide the high seas from "rivers, harbors and inland waters" (*Record, pp.* 172-174) effectually settles the question that the waters in which the collision occurred were subject to § 4412 as well as to § 4233, and were therefore subject to the regulations of the Supervising Inspectors; and further that such waters were subject to the particular set of regulations established by the Supervising Inspectors for the Atlantic seaboard (*Edition of* 1896, *p.* 73).

Second.

The collision was due solely to the faults of the *Argo*.

A. In that she was proceeding down the river upon the east bank, while, by the customs of navigation, she should have been in the middle of the river;

B. In porting after the *Albert Dumois* had given a signal of two blasts.

C. In that, when a cross-signal arose between her and the *Albert Dumois*, the *Argo* disregarded the provisions of Rule III. of the Supervising Inspectors and omitted to blow a danger signal and stop and reverse.

In this connection we insist that the cross signal was made by the *Argo;* but as the contentions of the *Argo* are otherwise, we reserve the disputed question for subsequent consideration.

D. In not maintaining a proper lookout.

Third.

If, in fact, as we assert, the *Argo* was proceeding down the east bank of the river, instead of in the middle of the river, her fault in this respect was the first fault.

It was the duty of the *Albert Dumois* to lay her course along the east bank of the river.

It was the duty of the *Argo* to lay her course down the middle of the river.

If either vessel neglected her duty in respect of choosing a proper course, her fault, in that respect, was the foundation fault of this collision.

There can be no question that it was the duty of the *Albert Dumois* to lay her course up the east shore.

The answer filed by the *Argo* not only asserts that the *Albert Dumois* was "on or near said eastern shore" (*Record, p.* 38), but also that she was at that time "in the "usual and proper course for ascending vessels at the "place, and under the wind and the conditions then pre-"vailing" (*Record, pp.* 37, 38). The proofs recognize this custom (*Lombard, p.* 244).

The *Albert Dumois*, in accordance with such custom, was in fact proceeding up the east bank. The fact is not only asserted in the pleadings, but is established by the proofs as indicated by the following references to her location:

"On the left bank of said river coming up stream" (*Record, Argo's original Libel, p.* 1).

"Ascending said river on the left bank thereof" (*Mrs. Blesine's Libel, p.* 13).

"Coming up the river close to the east bank" (*Jakobsen's Answer, p.* 22).

"Proceeding up the river as close to the east bank as it "was safe for her to do" (*Jakobsen's Petition, p.* 26).

"Ascending said river on the left bank thereof" (*Mrs. Hester's Petition, p.* 30).

"Ascending said river on the left bank thereof" (*Mrs. Hester's Answer, p.* 34).

"Coming up the river near but about 450 or 500 feet "from the east bank thereof" (*Argo's Answer, p.* 37).

"On or near said eastern shore" (*Argo's Answer, p.* 38).

"Coming up on the east shore" (*Brown, p.* 49).

"I saw the steamer coming up in the river, on the east "side of the Mississippi River" (*Jurisch, p.* 91).

"Coming up hugging the shore" (*Dedes, p.* 149).

"Right on the east shore" (*Theodore, p.* 230).

"About a ship's length from the east bank" (*Lombard, p.* 241).

"A couple of ships's lengths from the bank" (*Sibitsen, p.* 265).

"The bank on the starboard side was about half a ship's "length away" (*Larsen, p.* 297).

It was the duty of the *Argo* as a descending vessel to be in the middle of the river. Her own pleadings recognize this obligation; thus:

> "The said *Argo* was coming down the Mississippi "River at the point stated, in the middle of the "stream and in her proper place" (*Argo's Answer, p.* 37).
>
> "She was in the middle of the river, in her proper "course" (*Argo's Answer, p.* 39).

The undisputed proofs are to the same effect:

> "On which side of the river is it customary and "usual for descending vessels to take? A. They "take the middle of the river" (*Lombard, p.* 244).

The master of the *Argo* and her deckhand assert that in fact she was in the middle of the river (*Brown, p.* 48; *Deseamus, p.* 79).

Another of the libellant's witnesses locates her "about "in the middle of the river a little more to the east side" (*Jurisch, p.* 92).

These scanty proofs are all that are put forward in support of the *Argo's* contention that she was holding her course down the middle of the river.

But that she was not in the middle of the river is established not only by direct proofs that she was on the east shore when first seen by the *Albert Dumois*, but also by the fact that with all her porting and her high speed, she scarcely reached the middle of the river at the time of the collision.

First, as to the direct proofs.

The pilot of the *Albert Dumois* testifies that the *Argo* was "head and head" with his vessel, if anything a little more to the eastward (*Lombard, pp.* 241, 242).

The second officer confirms this (*Sibitsen, p.* 259).

Such relative positions of the two vessels necessitated that the *Argo* should be fully as close to the eastern shore as the *Albert Dumois*.

Important confirmation of these proofs is found in the testimony of Green, one of the crew of the *Argo*, who says that being in the galley he heard the first whistle of the *Argo;* that he looked out and saw *all three lights* of the *Dumois* (*Green, pp.* 102, 104).

The master of the *Day Dream*, a tug which was lying fast to the bank, testifies that the *Argo* passed down the east bank, within one hundred feet of him, so that he could see the color of the boat (*Theodore, pp.* 225, 226), although the night was very dark (*Brown, p.* 52; *Lindauer, p.* 158; *Sibitsen, p.* 274).

By indirect proofs it is shown just as clearly that the *Argo* must have originally been on the east side of the river for her own proofs show that she had scarcely reached the centre of the river at the time of the collision.

Orkney, her chief engineer, in speaking of her position after the collision, says:

> "We were midway between the two shores and "I proposed that we pull ashore. We did not "know which shore to go to *because one was as far* "*off as the other*" (*Orkney, p.* 70).

Her fireman says:

> "I could see the bank of the river before we left "the *Argo*. As soon as my eyes got rid of the "glare of the fire-room I could see the bank."
> "Q. In what part of the river was the *Argo* then? "A. About the centre" (*Broadhurst, p.* 89).
> "We were in the centre when I could get my "sight; I couldn't see when I first came up" (*Broadhurst, p.* 90).

The master of the *Admiral Takeitoff* says that when the vessels struck they were "about in the middle of the "river, a little more to the east side" (*Jurisch, p.* 92).

A man from the *Day Dream* locates the collision as follows, on rather a leading examination:

> "Q. A little to the westward of the middle of "the river? A. Something like that; in the middle "of the river, or a little more to that side" (*Dedes, p.* 151).

Indeed, the master of the *Argo* claims no more than that at the time of the collision they were "a little to the "westward of the middle" (*Brown, p.* 50).

Yet before the collision the *Argo* had been running under a hard-a-port helm (*Brown, p.* 49) at a speed of "pretty near twenty miles an hour" (*Brown, p.* 50) and for at least a quarter of mile.

She must have started from close to the east shore in order to reach the place of collision under such movements.

In thus trespassing upon the waters of the *Albert Dumois* along the east shore, she was guilty of a foundation fault.

The Victory and Plymothian, 168 U. S. 410, 426.

There is a natural effort on the part of the *Argo* in spite of all proofs which come from her deck, to show that the collision occurred close to the western bank, thus leaving room for her to argue that her original position was in the middle of the river.

She is obliged to base her contention, however, solely upon the testimony of Norbert Buras. He states that in dragging the river in the following March he drew up a door and a piece of rope from a point "four arpents" below the canal and "about five hundred feet more or "less" from the west bank (*Buras, pp.* 110, 111). The bits of wreckage have been in a measure identified, and do not seem to differ in character from those which drifted ashore two or three miles below the scene of the collision on the west bank (*Brown, p.* 54).

Assuming that Buras did in fact fish up these pieces of wreck, and, moreover, that they were originally parts of the *Argo*, the proofs are insufficient to disturb the conclusion that the place of the collision was in the middle of the river. His alleged discovery was made some six weeks after the collision. He gave his testimony May 21st. He appears to have gone deliberately at work to drag for the wreck. Having located it he took no measures to determine with accuracy its distance from the shore. If he imagined that the location of the wreck on the west shore was of importance to the owners of the *Argo*, his failure to take accurate measurements can be explained only upon the theory that he was satisfied that such measurements would not be as serviceable as loose, general estimates. If he did not have in mind that the location of the wreck was of importance, his estimates, made weeks after the event, are quite valueless.

Moreover, as has been shown in our principal brief (*p.* 24), the exact location of the wreck would afford only a slight clew to the place of the collision, inasmuch as the

Argo was kept at full speed, headed for the western bank, from the time of the collision and ran some indefinite distance before she sank.

Fourth.

The counsel for the *Argo* exhibits justifiable anxiety to eliminate the rules of the Supervising Inspectors from the case and to throw over the collision only the more general provisions of § 4233.

While the Pilot Rules for Atlantic and Pacific Coast Inland Waters provide, as do the statutes, that when vessels are approaching each other "head and head," or nearly so, it shall be the duty of each steamer to pass to the right or port side of the other, they incorporate as a note, under Rule VIII., the statutory provision that "due regard must "be had to all dangers of navigation, and to any special "circumstances which may exist rendering a departure "from the rules necessary to avoid immediate danger."

Edition of 1896, *p.* 75.

Under this provision the *Albert Dumois* will find justification for starboarding her wheel, instead of porting.

The point will be considered later.

Just now we have to do with the faults of the *Argo* and, in addition to her first fault in proceeding down the east bank, she was in fault—

A. In giving a cross-signal;

B. In porting after the *Alfred Dumois* had given a signal of two blasts;

C. In not stopping and reversing when the cross-signal arose;

D. In not having a lookout.

A. The *Argo* blew a cross-signal in violation of the rules.

The Pilot Rules provide:

> " Rule III: If, when steamers are approaching " each other, the pilot of either vessel fails to under- " stand the course or intention of the other, whether " from signals being given or answered erroneously, " or from other causes, the pilot so in doubt shall " immediately signify the same by giving several " short and rapid blasts of the steam whistle; and if " the vessels shall have approached within half a " mile of each other, both shall be immediately " slowed to a speed barely sufficient for steerage- " way until the proper signals are given, answered, " and understood, or until the vessels shall have " passed each other" (*Edition of* 1896, *p.* 73).

The *Albert Dumois*, upon discovering the lights of the *Argo* hovering outside the cluster of lights belonging to the *Day Dream* and the luggers, blew a signal of two blasts.

This signal is admitted (*Argo's Answer*, *Art.* 3, *p.* 38).

It is further admitted that after that signal the *Argo* blew one blast (*Argo's Answer*, *Art.* 3, *p.* 38).

These two signals, taken together, constitute a cross-signal and, as we contend, constitute the *original* cross-signal in this case.

The *Argo*, on her part, seeks to avoid responsibility for the cross-signal by contending that she had given a signal of one blast still earlier, just before the signal of two blasts from the *Albert Dumois*.

Such earlier blast, if it was blown at all, was not blown for the *Albert Dumois*.

The pilot and the mate of the *Albert Dumois*, who were on her bridge, testify explicitly that no whistles came from the *Argo* prior to the signal given by the *Albert Dumois* (*Lombard*, *p.* 241; *Sibitsen*, *p.* 259).

In considering the *Argo's* proofs upon this subject, it is necessary to determine at the outset how many whistles she blew in all.

Now, nobody, except possibly the master of the *Argo*, claims to have heard the *Argo* blow more than two signals from first to last.

One of these signals, the first of them, was blown to

the *Day Dream* (*Brown, p.* 49; *Deseamus, p.* 80; *Jurisch, p.* 91; *Dedes, p.* 148; *Theodore, p.* 225), and did not concern the *Albert Dumois.* The second one was not blown until after the *Albert Dumois* had given her signal of two blasts. But the plain effort is being made to make the signal which the *Argo* blew to the *Day Dream* do duty as an initial signal to the *Albert Dumois.*

Aside from the rather ingenious testimony of the master of the *Argo*, there is no support whatever for such contention.

Deseamus, the deckhand of the *Argo*, apparently heard only two signals of one blast from the *Argo*, and one of these was admittedly for the *Day Dream* (*Deseamus, pp.* 83, 84).

Broadhurst, the fireman of the *Argo*, testified:

> " Between twelve and one o'clock I heard the " captain signal to pass a boat; he blew a signal " blast of the whistle, and shortly after he blew " that one, he blew another; one blast, and shortly " after that the shock came; that is all I know of " it; that is all I can tell " (*Broadhurst, p.* 87).

This witness, being in the fire-room, never knew to what vessel any particular signal was directed; but his testimony is important in showing that only two whistles were blown.

Orkney, the engineer of the *Argo*, heard her blow only two whistles. Upon hearing the first he looked out and saw the *Day Dream's* tow (*Orkney, p.* 68). Later he heard the second single blast from the *Argo*, and after that heard the *Albert Dumois* (*Orkney*, p. 68). Inasmuch as he has testified to only one signal of two blasts from the *Albert Dumois*, whereas there were admittedly two, it is apparent that her first signal escaped his notice, a signal which was blown just prior to the *Argo's* second signal.

Green, the cook of the *Albert Dumois*, likewise heard only two signals from the *Argo* (*Green, pp.* 96, 103). He testified:

> " Q. Then the *Argo* only blew two signals? A. " That is all that was blown aboard of the *Argo*; " all that I heard; two signals for passing.

"Q. Did the *Argo* blow any signals for the *Day* "*Dream?* A. I didn't hear any.

* * * * * *

"Q. I am just asking—you are certain that you "only heard the blast of the *Argo's* whistle twice? "A. Between the *Dumois* and the *Argo?*

"Q. Yes? A. Yes, sir; that is all that was blown "on her.

"Q. *Did you hear any before that?* A. Yes, sir; "because we just had met a vessel a little before "that.

"Q. How long before that? A. About ten min- "utes; maybe *fifteen or twenty minutes;* some- "thing like that.

"Q. What was the vessel that you met then? "A. We met a vessel bound up, but I don't know "what boat it was" (*Green, pp.* 102, 103).

It is to be observed that this witness erroneously believed that both signals which preceded the collision were intended for the *Albert Dumois.* This was a matter outside of his province. The important feature of his testimony is that he heard only two signals from the *Argo* during the last few minutes preceding the collision.

Jurisch, the captain of the *Admiral Takeitoff*, summoned by the *Argo*, heard only two whistles from her. His vessel was lying alongside the *Day Dream*, and the witness supposed that one of those two whistles was intended for the *Day Dream*, as, in fact, it was (*Jurisch, p.* 91).

Eliminating the *Argo's* first blast from the case, as not being connected in any way with the *Albert Dumois*, it is clear that the cross-signal, which has occasioned so much trouble, was given by the *Argo.*

It is quite probable that the master of the *Argo* gave the cross-signal under the erroneous belief that he was subject to the regulations prescribed by the Supervising Inspectors for Western Rivers.

Under examination by his counsel, he testified:

"Q. You understand, of course, which vessel "should blow first?

"A. It was her (*Dumois*) place to blow first; that "is what I was waiting for" (*Brown, p.* 53).

And under cross-examination:

> "Q. You understand the rule to be, then, that "when an ascending vessel gives the signal for "sides, that the descending vessel may give her "signal for sides?
>
> "A. Yes, sir. I was waiting for him to do it, "and I thought I would have to do it; couldn't "wait any longer, &c." (*Brown, p.* 57).

Such a practice would be somewhat in accord with the Pilot Rules for Western Rivers (*Rule I., Edition of* 1896, *p.* 82); but the master's ignorance of the proper rules cannot relieve the *Argo*.

Moreover, even under the rules for Western Rivers, the *Argo* would have been bound to immediately blow danger signals and to stop and back (*Rules I. II., Edition of* 1896, *p.* 82).

B. Whatever the duties of the vessels might have been in respect of porting, if they had been in open waters, and if there had been *no* signals, the *Argo* was grossly in fault for porting as and when she did.

She did not port at the time she gave her alleged first signal of one blast (*Argo's Ans., Art.* 3, *p.* 38; *Brown, p.* 49). But, *after* the *Albert Dumois* had blown a signal of two blasts, and *after* the master of the *Argo* had observed that the *Albert Dumois* had starboarded in accordance with such signal, the helm of the *Argo* was put harda-port.

The answer of the *Argo* specifically sets forth that the *Albert Dumois* gave a signal of two blasts, "and com-"menced crossing the stream," and "shut out her red light "and showed her green light," and that "thereupon," the *Argo* replied with one blast and "put her helm harda-"port" (*Answer, Art.* 3, *p.* 38).

The master of the *Argo* testified to the same sequence of events. He said: "I could see he had starboarded his "helm" (*Brown, p.* 49). Yet he ported and persisted in porting, and at the same time maintained his speed, apparently imbued with the conviction that rules and regulations were not made for him, and that, with his

swift and nimble craft, he could follow his own inclinations without danger. He testified:

> "Q. By the one blast of your whistle and the "porting of your helm what was the purpose of "that; to which way did you want to go?
> "A. I wanted to go to the westward on the other "side, out of his way. I was quartering. *By the "velocity I was going I made sure I could have "passed him;* we were going pretty near twenty "miles an hour" (*Brown, p.* 50).

And, again:

> "I put my wheel hard aport, and the velocity I "was going I made sure I would go clear of him" (*Brown, p.* 58).

So he persisted in trying to cross ahead of the *Albert Dumois*, trusting to his port helm and his high speed.

The fact that the *Albert Dumois* had already effectively starboarded before the *Argo* ported is demonstrated also by the very circumstance of the collision. When the respective rates of speed of the two vessels are considered—that of the *Argo* nearly twenty miles an hour and that of the *Albert Dumois* only nine miles an hour, it is apparent that the *Albert Dumois* must, at the time the *Argo* ported, have already gained a position in the river decidedly to the *westward* of the *Argo*. Otherwise the *Argo* would have outstripped her in the race to the westward, and the collision could not have occurred.

The argument of counsel (*Brief. p.* 28) that the speed of the *Albert Dumois* was "nearly doubled" by the adverse winds and the opposing current against which she was struggling, is novel, but does not seem to require serious attention.

C. The *Argo* expressly violated Rule III. of the Supervising Inspectors, in not stopping and reversing (*supra, p.* 11), and at the same time violated Rule 21 of § 4233, which is:

> "Rule 21: Every steam vessel, when approaching "another vessel so as to involve risk of collision, "shall slacken her speed, or, if necessary, stop and "reverse."
>
> *U. S. Revised Statutes, Section* 4233.

The recklessness of the *Argo* in respect of her speed has been fully commented upon in our principal brief (*pp.* 10, 11, 12, 33, 35), and was the subject of specific remark on the part of the Circuit Court of Appeals (*Record, pp.* 336, 337). It does not seem probable that the plea that her construction was such that she could not stop and reverse in the manner of ordinary workaday craft, can be deemed good in law. Certainly if she was disqualified by her construction from performing her obligations to other vessels, she should have been scrupulously cautious about trespassing in their waters.

The master of the *Argo*, in attempting to justify the maintenance of his speed, testified:

> "Q. Why didn't you stop after you blew the "second whistle? A. Because my judgment said I "could clear her, with the velocity I was going" (*Brown*, 58).

He had no right at that time to exercise his fallible judgment in direct disobedience of the mandates of the Inspectors rules and the statutes, and he has no right now to speculate that even though he had slowed, and stopped and reversed, the collision might have happened nevertheless.

He violated a statute when he maintained his speed unchecked, and the burden rests upon him of proving conclusively that his fault *could not* have contributed to the collision.

> *The Pennsylvania*, 19 Wallace, 126, 136.
> *Richelieu Nav. Co.* vs. *Boston Ins. Co.*, 136 U. S., 408, 422.

But if the *Argo* had reduced her speed and still had collided with the *Albert Dumois*, it is not speculation to say that no such disastrous results would have ensued as we are now forced to contemplate, in the way of the total destruction of the boat and the loss of two lives.

D. The *Argo* was not only in fault in not carrying a lookout, but that fault apparently contributed directly to the collision.

She was confessedly short-manned, lacking two of her crew (*Brown, p.* 55). To effect a technical compliance

with the terms of the *Argo's* certificate (*Record, p.* 175) the master induced two of his passengers to call themselves deckhands (*Brown, pp.* 55, 56, 65; *Lindauer, pp.* 169, 170), and then the two men thus impressed into technical service went to bed (*Green, p.* 98).

Being thus short-manned, the *Argo* was navigated practically without any lookout. Her master stood at her wheel, abaft the pilot-house (*Brown, p.* 57).

Deseamus, the deckhand, appears to have been near him. But Deseamus was no lookout. His duties are thus defined by the master:

> "Q. Deseamus was standing alongside of you?
> " A. Yes, sir.
> "Q. How long had he been there? A. Off and
> " on since we left; *I kept him there in case I wanted*
> " *to send him anywhere;* he was lookout, too"
> (*Brown, p.* 57).

Deseamus, himself, shows how easy the discipline of the *Argo* was in respect of lookouts by his testimony:

> "Q. How long had you been on deck with Cap-
> " tain Brown that night? A. On the bridge, or
> " around the deck?
> "Q. Around the pilot-house? A. Off and on all
> " night.
> "Q. You didn't stay there all the time? A. I
> " didn't stay by the captain all the time; no, sir; I
> " would go down in the engine and warm myself;
> " then I would come up on deck and look around
> " and see if my lights were burning brightly,
> " and then I would go down and warm myself
> " again.
> "Q. You were standing alongside of Captain
> " Brown at the time you first discovered the light
> " of the *Dumois?* A. Yes, sir.
> "Q. What were you doing there? A. I was
> " standing there talking to him and keeping a
> " look-out.
> "Q. How long had you been standing there?
> " A. About half an hour; I was just thinking
> " about going down and warming myself then,
> " just before the collision" (*Deseamus, pp.* 84, 85).

Such management explains why the initial signal of two blasts blown by the *Albert Dumois* may not have been heard by the *Argo*, if, in fact, it was not heard.

The New York and The Conemaugh, decided Nov. 20, 1899.

Fifth.

The *Albert Dumois* was without fault.

We appreciate the technical rule which is sometimes invoked in this Court, that when both Courts below have determined that a stated fact has been established, this Court will not question their judgment.

Such rule, however, is not applicable to the present case.

It is true, indeed, that the District Court found the *Albert Dumois* in fault; but the learned Judge has not put in the record any statement of his reasons therefor. We do not know what facts he deemed existed, and, in view of the facts as we know them, we have the right to assume that his error was one purely of law.

The Circuit Court of Appeals felt constrained to find the *Albert Dumois* partly in fault, but we submit that their conclusion also was an error of law. They say:

> "The fault of the *Dumois* is not so apparent. "She was properly officered, manned and equipped; "had a regular licensed pilot on board, carried the "regulation lights, and was in a place where she "had a right to be at the time the *Argo* was "sighted" (*Opinion, p.* 337).

Thus situated, and being bound up the river, the *Albert Dumois* saw ahead of her and close on the eastern shore of the river a cluster of lights belonging to the *Day Dream* and her tow of luggers. This tow had gone up the river an hour or so before, and had been made fast on the east bank of the Mississippi, just below the mouth of the New Canal.

The stiff wind blowing off the east shore sent one of the luggers, the *Admiral Takeitoff*, adrift. The *Day Dream* had been in search of her, and was "about making a land-"ing when the *Argo* blew one whistle" (*Dedes*, *p.* 148). Just above her lay four or five luggers (*Theodore*, *p.* 226).

This cluster of lights, hovering along the eastern shore extended from fifty to a hundred feet into the river. Just outside of them, not more than a hundred feet away, were the lights of the *Argo* (*Theodore*, *pp.* 225, 226).

The lights of the *Argo*, white, green and red, were all *on the same level*, about twelve feet above the water (*Brown*, 59).

These lights, low as they were, and not being the lights required by law (*U. S. Revised Statutes*, § 4233, *Rules* 3, 5, 6, 7) were not readily dissociated from those carried by the *Day Dream* and her flotilla. Moreover the pilot of the *Albert Dumois* was naturally slow to believe that a vessel was coming down the river on the eastern shore, in waters in which no descending steamer had any right to be.

Thus special circumstances existed, such as are contemplated by the Statutes and the Supervising Inspectors' rules and by the decisions of this Court, which justified the *Albert Dumois* in starboarding insteading of porting.

U. S. Revised Statutes, § 4233, *Rule* 24.

These are the circumstances:

The *Argo* was a light draft vessel, drawing only six feet (*Brown*, *p.* 62), and had already reached, if she had not passed, the *Day Dream* and her tow.

The *Albert Dumois* was a deep draft, sea-going steamer. She was already scarcely two hundred feet from the shore, "hugging the shore" (*Lombard*, *p.* 241; *Dedes*, *p.* 149). She had selected this place, according to custom, and with the justifiable expectation that she would not meet descending vessels in her waters.

The *Argo's* own witness, Conrad, testifies that it was scarcely safe for a vessel of her size to go closer than a hundred yards to the shore:

> "Q. How near would it be safe for a vessel to "go in there; a vessel like the *Albert Dumois?* A.

"I wouldn't run within—very close—one hundred "yards of it." (*Conrad, p.* 169.)

If the *Albert Dumois* had ported for the *Argo*, a vessel that had no right to be in her way, she would have been compelled to run into possible danger on the shore; and, moreover, would scarcely have been able to regain a position in the river outside of the *Day Dream* and the luggers by the time she reached them.

The *Argo*, with her light draft, and being already clear of the *Day Dream* and luggers, might readily seek waters nearer shore.

The *Albert Dumois* was even prepared to let the *Argo* hold her course, for when the *Albert Dumois* gave her signal of two blasts she *at the same time* starboarded her wheel (*Lombard*, pp. 241, 242).

The fact that the *Albert Dumois* had *actually* starboarded was noted by the master of the *Argo*, who saw her red light disappear and her green light come into sight under the influence of starboarding, just after her first signal of two blasts was blown, and before her second signal was heard (*Brown, pp.* 49, 50). The fact that the *Albert Dumois* thus promptly starboarded is indeed pleaded by the *Argo* in her answer (*Ans., Art.* 3, *p.* 38).

Nevertheless, the *Argo* then, after hearing the *Albert Dumois'* signal, and *after seeing* that she was starboarding, blew a signal of one blast, ported, and hard aported (*Brown*, p. 49; *Ans. Art.* 3, p. 38).

As soon as this signal of one blast came from the *Argo*, and it was the first signal that the *Albert Dumois* heard, and was, moreover, we submit, the first signal that was blown to her, the pilot of the *Albert Dumois* promptly repeated his signal of two blasts, following it instantly with a danger signal, and at the same time stopped and reversed his engines.

Her pilot testifies:

"You answered the *Argo's* whistle immediately? "A. Yes, sir, with two and the danger signal."

"Q. What interval was there between that and "the backing of the *Dumois?* A. Just about two "seconds; at the time I blew my whistles I rang

" the telegraph to back, stop and back full speed " astern " (*Lombard, p.* 243).

The mate testifies:

" A. We blew the danger signals right at once as " we blew the two whistles; we blew the danger on " top of it.

" Q. When were the engines stopped and re- " versed? A. As soon as the danger signal was " blown.

" Q. Was the order obeyed? A. The order was " obeyed " (*Sibitsen, pp.* 271, 272).

The wheelsman testifies:

" Q. Do you know when the pilot telegraphed to " reverse the engines? A. Yes, sir.

" Q. When was that? A. It was right there; " when he blew the danger signal he went from the " whistle string to the telegraph.

" Q. Were the engines of the steamship reversed " or not in response to this telegraph? A. Yes, sir; " on our vessel it was stopped " (*Larsen, p.* 297).

This testimony is further confirmed by the master (*Rustad, p.* 211).

The Circuit Court of Appeals have not found *facts* which justify its judgment that the *Albert Dumois* was partly in fault for this collision. They base their conclusion, apparently with reluctance, upon the supposed application of Rule 19 of § 4233, which provides:

" If two vessels under steam are crossing so as " to involve risk of collision, the vessel which " has the other on her starboard side shall keep out " of the way of the other,"

U. S. Revised Statutes, § 4233, *Rule* 19

and upon the so-called " fifth situation " of the Supervising Inspectors (*Opinion, pp.* 337, 338).

They have recognized that the *Albert Dumois* was justified by circumstances in starboarding for the *Argo* originally, instead of porting.

We submit, however, that the Court fell into legal error in supposing that either Rule 19 of § 4233 or the "fifth situation" of the Supervising Inspectors was applicable to the *Albert Dumois*, when she found herself, *as the result of such manœuvre*, temporarily in the indicated situation, and applicable with such effect as to impose upon her either the general obligation of everlastingly keeping out of the way of the *Argo*, or the specific obligation of porting her helm.

It is not as though, upon coming within range of each other's lights, the *Albert Dumois* had found herself, unhampered by special circumstances, carrying the *Argo* on her starboard bow, or, what amounts to the same thing, had found herself in the position defined by the Supervising Inspectors as the fifth position.

The situation was one of emergency. It was not an original situation; it was one created by manœuvres properly adopted for passing the *Argo*.

A situation similar to the "fifth situation" had been created by the starboarding of the *Albert Dumois*, and properly created. It would nullify the manœuvre, and lead to unmeasurable complications to hold that she must, pursuant to the regulations governing the "fifth situation," port her helm, undo everything that she had done, turn again to the east bank, and run away from the safety which she had acquired.

The *Albert Dumois* performed the full measure of her duty under the statutes and under the Supervising Inspectors regulations when she effectively starboarded, and made such starboarding known to the *Albert Dumois*.

Her manœuvres were frustrated by the porting of the *Argo*, a porting which occurred *after* the *Argo* knew that the *Albert Dumois* had starboarded (*Argo's Ans. Art.* 3, *p.* 38), and at a time when the *Argo* was therefore bound to starboard, or, at the least, to hold her course.

The same statute which required the *Albert Dumois* to keep out of theway, obligated the *Argo* to hold her course.

U, S. Revised Statutes, § 4233, *Rule* 23.

But the *Argo* deliberately ported.

For this second situation of peril, thus created by the porting of the *Argo*, the *Albert Dumois* was specifically directed, both by statutes and by rules, to seek safety in *stopping and reversing*, and stop and reverse she did, with all promptness.

U. S. Revised Statutes, § 4233, *Rule* 21.
Inspectors Rules, Rule III., Edition of 1896, *p.* 73.

She could do nothing more. It is well known that upon reversing the screw of a steamer her helm becomes practically powerless. It may operate naturally or just the reverse, or may not operate at all. Much depends upon the state of her loading, the direction of the wind and current, or the build of the steamer. In any event its influence is slight.

White's Manual of Naval Architecture.
Marsden's Collisions at Sea, 4th Ed., p. 504.
Luce's Seamanship, p. 546.

When one vessel is found grossly in fault, the Court will not examine critically to see whether the other has exercised the highest degree of skill in her management.

The Elizabeth Jones, 112 *U. S.*, 514, 526,
The Maggie J. Smith, 123 *U. S.*, 349, 355.

Or, as stated in a recent case:

> " As between the vessels, the fault of the *Victory* " being obvious and inexcusable, the evidence to " establish fault on the part of the *Plymothian* " must be clear and convincing in order to make a " case for apportionment."
>
> *The Victory and the Plymothian*, 168 *U. S.*, 410, 423.

The *Albert Dumois* was prompt to recognize the first fault of the *Argo*, that of proceeding down the east shore, and made her best efforts to meet the emergencies which it created by starboarding her helm, and by signalling accordingly.

She was again prompt to recognize the next fault of the *Argo*, that of porting, by stopping and reversing her engines as required by law, and by signalling accordingly.

She was powerless to do anything more whan the *Argo* committed the further fault of maintaining her high speed.

Whether, in the light of present knowledge, it now appears that the *Albert Dumois* could have done more, is not the question. The question is whether, "in the exercise "of due care and caution in the management of the "vessel," her navigators were at the time bound to do more.

The Victory and Plymothian, 168 *U. S.*, 410, 424.

Sixth.

The question of the value of the *Argo*, if that is a material point, has been fully argued in our principal brief.

The disallowance of interest by the Circuit Court of Appeals was within their right under Rule XXX., the fourth section of which provides:

> "In cases of admiralty damages and interest "may be allowed, *if specially directed* by the "Court."

The disallowance of interest is an indication by the Circuit Court of Appeals even beyond the language of their decision, of their views as to the relative faults of the two vessels.

Seventh.

Assuming for the sake of argument that both vessels were in fault for the collision, the *Argo's* third assignment of error (*Brief, pp. o and p*), as well as the argument

put forward in support of same (*Brief, pp. r to* 7), is unsound. It is to the effect that by surrendering the wrecked hull of the *Argo* and her charter hire (*Record, p.* 43), her owner discharged himself from all further liability to persons sustaining losses through the collision.

He asserts, therefore, a right, under a decree of mutual fault, to recover from the *Albert Dumois* a full, clean one-half of the value of the *Argo* undiminished by any contributions to Mrs. Hester and Mrs. Blesine. His surrender of the wreck and hire effects no such result. In order to secure the benefit of limitation of liability he would be bound to surrender, not merely the physical wreck, but also all his "rights of action which were "directly representative of the ship and freight."

O'Brien vs. *Miller*, 168 U. S., 287-303.

By the rules of law recognized in that case, any possible recovery of the owner of the *Argo* against the *Albert Dumois* under a decree of mutual fault is chargeable with one-half of the damages awarded to Mrs. Hester and Mrs. Blesine.

In a supplemental brief filed on the part of the *Argo* it is urged that no lien or privilege exists upon an offending vessel in support of the right of action given by the Louisiana Code in respect of injuries resulting in death.

We believe the contention is not sound. The Civil Code of Louisiana, as amended by Act No. 71 of 1884, is as follows:

> "Article 2315.--Every act whatever of man that "causes damage to another, obliges him by whose "fault it happened to repair it; the right of this "action shall survive, in case of death, in favor "of the minor children or widow of the deceased, or "either of them, and in default of these, in favor "of the surviving father and mother, or either of "them for the space of one year from the death. "The survivors above mentioned may also recover "the damages sustained by them by the death of "the parent, or child, or husband or wife, as the "case may be."

While this Article, standing by itself, does not necessarily contemplate anything more than an ordinary action according to the course of law as it is administered in Louisiana (*The Corsair*, 145 U. S., 335, 348), the Code elsewhere explicitly gives a lien upon an offending craft for a prescribed period:

> "Paragraph XII.--Where any loss or damage
> " has been caused to the person of property of any
> " individual by any carelessness, neglect or want of
> " skill in the direction or management of any steam-
> " boat, barge, flat boat, water craft or raft, the
> " party injured shall have a privilege to rank after
> " the privileges above specified. The term of the
> " prescription of privileges against ships, steam-
> " boats and other vessels shall be six months."
>
> *Civil Code, Article* 3237.

The owners of the *Albert Dumois* and of the *Argo* both instituted their respective proceedings for limitation of liability within the period of prescription, and therefore during the life of the liens. Thereafter the claims of Mrs. Blesine and Mrs. Hester, were maintainable only in such proceedings and were enforceable only against the security given therein.

> *United States Revised Statutes*, § 4285.
> *Admiralty Rules*, 54-58.
> *Norwich Co.* vs. *Wright*, 13 Wallace, 123.
> *Steamship Co.* vs. *Hill Mfg. Co.*, 109 U. S., 598.
> *Butler* vs. *Boston Steamboat Co.*, 130 U. S., 527.

The prescription of time through which the lien upon the *Corsair* (145 U. S., 335) was lost was therefore not operative.

It is immaterial, however, whether there was a lien accorded by the Louisiana statutes in respect of the claims of Mrs. Blesine and Mrs. Hester, and it is also immaterial whether either Mrs. Blesine or Mrs. Hester sought relief through allegations of such lien.

The claims filed by them respectively were proper claims to file in limited liability proceedings.

The Catskill, 95 Fed. Rep., 700.

If the *Albert Dumois* was partly in fault for the collision, then the decree against the bond given for that vessel in favor of Mrs. Blesine and Mrs. Hester respectively was correct. And, upon the assumption that both vessels were in fault, the decree was correct in offsetting against the allowance to the owner of the *Argo*, one-half of all damages sustained by the *Albert Dumois* physically or paid by her stipulators.

The North Star, 106 U. S., 17.

The Chattahoochee, 173 U. S., 540.

Eighth.

It is respectfully submitted that the decree of the Circuit Court of Appeals should be reversed and that a mandate should issue to the District Court of the United States, directing that Court to sustain the petition of the owners of the *Albert Dumois*, and to dismiss all claims against the vessel and her owner, with costs.

WILHELMUS MYNDERSE,
Advocate.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 139.

OSCAR M. SPRINGER, LIBELLANT, PETITIONER,

versus

ANDERS JAKOBSEN, CLAIMANT OF THE S. S. ALBERT DUMOIS.

No. 272.

ANDERS JAKOBSEN, CLAIMANT OF THE S. S. ALBERT DUMOIS,

versus

OSCAR M. SPRINGER ET ALS., RESPONDENTS.

Brief on Behalf of Mrs. Harrison P. Hester, Individually and as Tutrix.

STATEMENT.

The steam yacht Argo, belonging to Oscar M. Springer, was on the 27th day of January, 1897, chartered to the New Orleans *Picayune* newspaper to make a trip to the jetties at

the mouth of the Mississippi river and return. She started on her journey on the evening of the same day, at about 7 o'clock, having on board James Brown, captain and pilot; Robert Orkney engineer; Henry Deseames, deckhand; Isaac Broadhurst, fireman; Edwin C. Green, cook and steward; H. G. Hester, A. C. Lindauer, A. Faure, Bourgeois de Blesine and L. Frantz. Hester, Lindauer and Blesine were reporters of the *Picayune* and Frantz was a guest. Hester was in charge of the reporters.

According to her inspection certificate the Argo should have had one pilot, one engineer and five crew. To avoid delay Hester and Blesine agreed to lend a hand in place of two of the crew (p. 48).

The facts of the collision, the result of the trial in the District Court and the appeal and assignment of errors are all stated in the brief of Mr. DeGray for the Argo, and it is not necessary to repeat here.

The Dumois having taken the benefit of the limited liability act and a monition having been issued by the Court prohibiting suits against both vessel and owners, Mr. Hester came in in answer to the monition and filed an answer thereto, and also a petition, the two being in substantially the same language.

Judgment was rendered in favor of Mrs. Hester individually for $3000, and in her favor as tutrix of her minor child for $2000.

If, as we assume, Hester was a passenger on board of the Argo, it is a matter of indifference to us whether the Argo and Dumois are both at fault, or the Damois alone to blame for the collision, for it was practically conceded in the lower Court, and, indeed, perfectly clear from the evidence that the Dumois was blameworthy In the case of the Atlas, 93 U. S. 303, and the Juniata, 93 U. S. 338, it decided that when two vessels are to blame for a collision an innocent party can recover from either the whole of the damage. We can, therefore, recover the whole amount of damage from her whether she alone be to blame or the Argo be equally blameworthy.

We have, therefore, no great interest in fastening the whole fault upon the Dumois, but the evidence in the case is to our minds so clear that we would argue against our convictions if we attempted to hold the Argo responsible.

The rules governing the case are to be found in an act of Congress of 1895, the regulations established thereunder, and Sec. 4233 of the Revised Statutes.

Under these rules it was the duty of both the Argo and Dumois to have blown one whistle and passed each other on the port side. The Argo did all that the law required, and, therefore, is not to blame. If she complied with the law the Court should not hold that she did wrong, and for like reason the Dumois, not having complied with the law, the Court should hold that she did wrong.

There seems no answer to the proposition, and the only answer made appears to be that the Argo is also to blame, because she was, it is contended, close to the east bank, directly in the course of ascending vessels, and, moreover, did not port her helm as soon as she blew one whistle, thereby placing the Dumois in a condition of extreme peril.

This argument assumes that the Argo was close to the east bank, and not in the middle of the river, and is not supported by the evidence, which clearly establishes that the Argo was descending in the centre of the river, the usual and proper course for descending vessels; that the Argo blew first—one whistle; that the Dumois answered with two whistles and starboarded her helm; that the Argo immediately blew one whistle and ported her helm; that the Dumois replied with two whistles and immediately blew the alarm whistle; that the collision occurred immediately thereafter, and that the interval of time between the blowing of the first whistle and the collision was exceedingly short.

ARGUMENT.

Brown, master of the Argo (pp. 48-50); Deseames, her lookout (p. 79); Orkney, her engineer (p. 69), say the Argo was descending in the middle of the river. The evidence of these three of the Argo crew is contradicted by Lombard, the

pilot, and Sibitzen, the mate and officer of the Dumois, and by Theodore, master of the Day Dream, and Larsen, a seaman of the Dumois, while Dedes, pilot of the Day Dream (p. 151), which was lying at the east bank, and Jurisch, master of a lugger tied up on the river side of the Day Dream, fix the Argo (pp. 91-108) in the middle of the river, in the usual course of descending vessels.

Thus five witnesses, two of whom are disinterested, are opposed to four on behalf of the Dumois, only one of whom is disinterested. The testimony of this one (Theodore) is entitled to no weight, for he swears that the Argo passed so close he could see her white paint by his chimney light and thought she would run into him, and yet swears he did not see the lights of the Argo, and did not know which way she was going, whether up or down stream. He further agrees that the collision occurred in the centre of the river, and yet to eke out his statement of the proximity of the Argo says the collision took place within 200 feet of the Day Dream. Theodore also admits that he heard the Argo blow, but heard no signals from the Dumois, and refuses to state even approximately how wide the river is at any point; thinks it a mile wide at New Orleans, but won't swear it is not two, three or five miles wide. Jurisch, who was on the lugger lying on the outside of the Day Dream, and therefore close to the course of the Argo, says she was in the centre of the stream, and Dedes, Theodore's pilot, also places her in the centre of the stream, and neither expressed the slightest apprehension that the Argo would run them down.

In addition to a strong preponderance of testimony we have probabilities in favor of the Argo. She had been chartered by the *Picayune* to go down the river in pursuit of the Whitney, which had started some hours before, and was on a mission of haste, requiring the utmost speed. Every one knows that the proper course for the Argo to have taken under the circumstances was the centre of the river, where she would have the benefit of the current, and it is hardly reasonable to suppose that Brown, with forty years of experience, should have left the current and hugged the eastern shore. This

Court, in The City of New York, 147 U. S. 72, held that the probability that a vessel will pursue the usual course is a strong presumption, requiring a clear preponderance of testimony to overcome. Add to this that the collision occurred to the west of the centre of the river, and that the wreck of the Argo was located at a point 500 feet from the west bank (p. 110 et seq.), and it is settled that the Argo was in the centre of the river, in the usual and proper course, and that the Dumois is alone to blame for the collision and loss of two precious human lives.

But the case of the Dumois is so weak that if all of the testimony in the case be excluded, except the testimony of her own witnesses, she will still be found in fault.

It is conceded that she blew the wrong whistle, but it is contended that she could not do otherwise, because she was too close to the east bank to port her helm and go to the starboard, and was compelled to go to port by the action of the Argo in hugging the east bank and not promptly going to port as soon as she blew her first whistle, thereby placing the Dumois in extreme peril, necessiating some action on her part to endeavor to save herself.

Granted that the Argo was on the east side, Brown's signal of one whistle was correct, and according to law, and the duty of the Dumois under the same law was to port her helm and go to the starboard if she had room, and if she did not have room to blow one whistle and stop, and if necessary reverse. The blowing of two whistles and starboarding the helm was a clear violation of the law.

If the Dumois had obeyed the law no collision would have occurred, no lives been lost, for if the Argo almost succeeded in getting by the Dumois, which was chasing her across the river, she would certainly have safely passed by the Dumois if she had stopped or even held her course. The extreme peril was not brought about by the acts of the Argo, and, therefore, the rule of extreme peril has no application. Again, according to the Dumois, she blew the first whistle announcing her intended violation of the law, and Brown at once replied with one that he intended to obey the law.

Granted that the Argo did not port her helm when she blew the first signal, we have only a difference of opinion between her master and the Dumois as to whether she could hold her course and pass safely, whereas the Dumois anticipated and assumed that the Argo could not do that which the Dumois knew to be her duty and which she actually did do, viz.: blow one whistle and port her helm, for the Dumois claims to have blown first—two whistles and starboard her helm.

But if there was any evidence in this case authorizing the Dumois to invoke the doctrine of extreme peril, "the burden of proof lies on the party alleging that he was justified in such departure. Indeed, in the *Argo* it was ruled that not only must it be shown that the departure at the time it took place was necessary in order to avoid immediate danger, but also that the course adopted was reasonably calculated to avoid that danger. And it is the settled rule in this Court that when a vessel has committed a positive breach of statute, she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so." (*Belden vs. Chase*, 150 U. S. 674, 699.)

On her own testimony, the Dumois had ample room to port her helm and go starboarded. Three witnesses on the Dumois swear to her distance from the bank when the Argo appeared. Lombard, the pilot, says she was about one ship's length from the bank (p. 241). (A ship's length is 210 feet, says Lombard, p. 239). Larsen (p. 297), the man at the wheel at the time of the collision, says about half a ship's length, while Sibitzen, the mate and officer on watch and in command of the Dumois, places her at a distance of a couple of ship's lengths (p. 265), or about 500 feet (p. 275), far enough out to pass the luggers without swinging out into the stream (pp. 273, 274). He says that if the Dumois had kept her course up the river, there would have been about 450 feet of space between her and the luggers as she went up stream (p. 276), and that the Argo was further out from the bank than the luggers, nearer on a line with the Argo (p. 274). If Sibitzen be correct, the Dumois had plenty of room to go to starboard, as the charts in evidence show

deep water up to the bank, deep enough to float much larger vessels than the Dumois. If we add the three distances together and divide by three, the Dumois was 270 feet from the bank, and could have gone 200 feet closer. In the face of such evidence it is difficult to understand how it is possible to absolve the Dumois, unless we are to disregard Sibitzen and take the naked statement of Lombard, that he could not approach the bank more closely, and disregard also the chart, which shows deep water up to the very bank; and also Jurisch (p. 93), and Dedes (p. 152), who testify to deep water.

On the evidence of all parties, the collision would not have occurred had the Dumois simply done nothing but hold her course. She claims that she was close to the eastern bank, and admits that the collision occurred to her starboard, in the middle of the river. The statement is sufficient to show that she is in fault.

As said by Judge Woodruff in the Atlas case (10 Blatchford), the Dumois should have complied with the law, and then, if a collision had occurred, she at least would have been free from blame.

It would have been better and certainly done less harm if the Dumois had actually run into the bank.

Rules governing the movements of ships are made by competent persons, who adopt them carefully and considerately, while the observance of these rules is entrusted to all sorts of men. The only safety of travelers upon the water is to demand and enforce a rigid observance of the rules.

If anything further were needed to condemn the Dumois, she has furnished it. The testimony would have been incredible if it had not fallen from the mouths of her own witnesses. They testify that the steersman, or man at the wheel, was changed between her first and her second cross signal (Larsen, p. 297, Sibitsen, pp. 262, 263); that the lookout did not report the lights of the Argo (pp. 258, 259); that the lookout walked backward and forward from the bow, so that half of the time he could not see ahead (p. 267). As tending to further show the lack of discipline on the Du-

mois, the evidence is that though the crew of the Argo had time to get out a boat, get into it, row away from the Argo to the Dumois, the Dumois did not succeed in getting a boat off to the rescue of the Argo.

A circumstance which tells strongly against the Dumois is that her lookout, Peter Johnson, and the man who was at the wheel when the Argo was first sighted and the first signals given (pp. 299, 302) were not produced as witnesses for the Dumois (p. 29).

The Dumois was libeled on the day of the collision and the testimony of Wessel and Johnson could have been taken, and it must be presumed would have been taken if favorable.

Hester was a bright and promising young man. All of the witnesses say he was a born journalist, able in time to rise to the head of his chosen profession, having shown marked ability and industry. He was earning $17.50 a week, was shortly to be raised to $20, then $25 per week, and his widow and child were solely dependent upon his labor, having no means of their own. By the fault of the Dumois they are deprived of support. The widow is not in robust health; the child a helpless infant, with a long life in prospect.

In a supplemental brief on behalf of the Argo, it is claimed that Mrs. Hester and Mrs. Blesine can not recover, because they have no claim against the offending vessel, having no lien under the local law.

This is a misapprehension. Act No. 71, of 1884, amending Art. 2315 of the Civil Code, reads:

"Every act whatever of man that causes damage to another, obliges him by whose fault it happened, to repair it. The right of this action shall survive in case of death in favor of the minor children or widow of the deceased, or either of them, for the space of one year from the death. The survivors above mentioned may also recover the damages sustained by the death of the parent or child or husband or wife, as the case may be."

And Art. 3237 of the Code, paragraph 12, reads:

"When any loss or damage has been caused to the person or property of any individual by any carelessness, neglect or

want of skill in the direction or management of any steamboat, barge, flat boat, water craft, or raft, the party injured shall have a privilege to rank after the privileges above specified. The term of the prescription of privileges against ships, steamboats, and other vessels shall be six months."

Proscription had not accrued when proceedings were instituted.

But the question ~~often~~ is immaterial, the monition issued "against all persons claiming damages, for any and all loss, damage or injury caused by, or resulting from the collision aforesaid, citing them to appear before this Honorable Court and answer said petition, and make due proof of their respective claims," and Mrs. Hester properly and rightly came in in answer to the citation and made her claims. It is idle to claim that one is forbidden to act by the order of the court and at the same time deprived of all remedy.

The point is expressly decided in our favor in The Catskill, 95 Federal Reporter, 700.

As justly said in the supplemental brief on behalf of the Dumois:

"If the *Albert Dumois* was partly in fault for the collision, then the decree against the bond given for that vessel in favor of Mrs. Blesine and Mrs. Hester, respectively, was correct, and upon the assumption that both vessels were in fault, the decree was correct in offsetting against the allowance to the owner of the Argo one-half of all the damages sustained by the *Albert Dumois* physically or paid by her stipulation.

The North Star, 106 U. S. 17.

The Chattahoochee, 173 U. S. 540.

It is respectfully submitted that the judgment of five thousand dollars in favor of Mrs. Hester and her minor child should be affirmed, with interest at the legal rate of 5 per centum per annum from the date of the decree of the District Court, viz., January 29, 1898, as provided in said decree.

GEORGE DENÈGRE,
J. P. BLAIR,
WALTER D. DENÈGRE,
Proctors for Mrs. Hester.

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No. 795.

Motion Papers.

OFFICE SUPREME COURT U. S.
FILED
APR 24 1899
JAMES H. McKENNEY,
Clerk.

Filed Apr. 24, 1899.

Supreme Court of the United States

OCTOBER TERM, 1898.

ANDERS JAKOBSEN, PETITIONER,

vs.

OSCAR M. SPRINGER ET ALS., RESPONDENTS.

MOTION.

J. D. ROUSE,
WM. GRANT,
JOHN S. BLAIR and
JOHN W. WARNER,
Proctors.

LAW REPORTER PRINT.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1898.

ANDERS JAKOBSEN, PETITIONER,

vs.

OSCAR M. SPRINGER ET ALS., RESPONDENTS.

And now come the proctors for Anders Jakobsen, claimant of the Norwegian steamship, Albert Dumois, in the above-entitled cause, and move the court that the petition filed by him (and which is supported by a brief), be ordered filed in the original cause No. 413, and that petitioner may there have the benefit of his assignment of errors, his petition praying for the allowance of a writ of *certiorari*, being in the nature of a cross-appeal.

J. D. ROUSE,
WM. GRANT,
JOHN S. BLAIR and
JOHN W. WARNER,
Proctors.

SUPREME COURT OF THE UNITED. STATES.

October Term, 1898.

ANDERS JAKOBSEN, PETITIONER,

versus

OSCAR M. SPRINGER ET ALS., RESPONDENTS.

THE PETITION OF ANDERS JAKOBSEN, CLAIMANT OF THE NORWEGIAN STEAMSHIP ALBERT DUMOIS, PRAYING FOR THE ALLOWANCE OF A WRIT OF CERTIORARI, IN THE NATURE OF A CROSS-APPEAL, IN NO. 413, OCTOBER TERM, 1898.

To the Honorable the Judges of the Supreme Court of the United States:

Your petitioner, Anders Jakobsen, claimant of the Norwegian steamship Albert Dumois, with respect represents that a collision lately occurred in the Mississippi river between said steamship and the steam yacht Argo, and that Oscar M. Springer, on the 28th day of January, 1898, alleging himself to be the owner of said yacht, filed a libel against said steamship in the District Court of the United States for the Eastern District of Louisiana, claiming damages in the sum of $40,000, as in case of a total loss, and that said steamship was arrested under process issued in said libel; that thereupon your petitioner filed a petition in the cause claiming the benefit of the limited liability provided for in the act of Congress of March 3, 1851, and in Sec. 4263 of the U. S. Revised Statutes; that all parties in interest were brought in under

said petition, and the said steamship and her pending freight were appraised and the vessel released upon a bond duly approved and accepted by the Court; that Mrs. Marie B. Bougeois de Blesine, mother of Faurie de Blesine, a member of the crew of the Argo, who lost his life in said collision, and Mrs. Genevive Kiplinger Hester, wife of Harrison P. Hester also a member of the crew of the Argo, who lost his life in said collision, each came in and propounded claims for $10,000 damages for loss of life, and that members of the crew of the yacht Argo also came in and filed claims for loss of personal effects for a small amount.

The collision above referred to took place eighty miles below the city, between the Argo, a fast steam yacht, 101 feet long, six feet draught, and the Norwegian steamship Albert Dumois, a slow freight vessel, 210 feet long and seventeen feet draught, engaged in the fruit trade between New Orleans and Port Limon, Costa Rica.

The Argo was chartered by representatives of the daily *Picayune*, and left the city of New Orleans at 7 o'clock P. M. January 27, 1897, for a trip to the Jetties, having on board James Brown, as master; Robert S. Orkney, engineer; Isaac Broadhurst, firemen; E. C. Green, cook; Charles A. Desseamus, deck hand, and H. P. Hester and Faurie B. de Blesine, reporters for the *Picayune*, who shipped as part of the crew, the yacht being shorthanded.

The Dumois entered the river on a voyage from Port Limon, Costa Rica, to New Orleans, about 10 o'clock P. M., having on board William M. Lumbard, a licensed pilot; a master and first and second mate, engineers and a full crew.

Both vessels arrived at a point near the new canal, eighty miles below the city, about 12:30 A. M., the Argo descending near the east bank at a speed of eighteen or twenty miles an hour, and the Dumois ascending also near the east bank at a speed of nine miles an hour, and when signals were first exchanged for passing they were about half a mile apart, "head and head," the Argo, however, being a little on the starboard of the Dumois. The night was clear, but dark, and a bitter cold wind was blowing across the river from east

to west. The Tug Day Dream, with a tow of two or three luggers, at this time, was just coming in to the landing, about 200 feet below the canal on the east bank, for the purpose of lying by for the night. The Argo came down very close to the tug and luggers and saluted them with one whistle when just above them and again as she passed them. After the Argo had passed them and as soon as her lights came in view and could be distinguished, the Dumois gave two blasts of her whistle, indicating that she would starboard and pass the Argo on the right, it being impossible for her to port her helm without going into the bank, or running into the tug and luggers, just ahead, and it being unsafe to keep to her course in the face of the Argo, which was rapidly approaching, "head and heaed," without indicating her intention to change her own course. Immediatly after the Dumois changed her course so that her red port light was shut out, the Argo answered her signal with one whistle. and put her helm hard aport, still keeping her speed, Captain Brown believing, as he says, that his vessel was so fast he could safely cross ahead of the Dumois. Supposing that his first signal had not been heard, or if heard had been misunderstood, the pilot of the Dumois immediately repeated his signal, and gave the danger signal of three whistles and reversed and backed; but before her headway could be fully stopped, the Argo came in collision, striking the Dumois at right angles about ten feet aft the stem. After the vessels separated, the Argo's engines, which had stopped from the shock, were started up and the head pointed to the west bank with the intention of beaching her, but she sunk in four or five minutes, carrying down Hester and Blesine, who lost their lives, and became herself a total loss.

The pleadings filed on the part of the claimant of the Albert Dumois charge that Blesine and Hester were members of the crew of the yacht Argo at the time they were killed; and that the Argo was solely in fault for the collision. The pleadings filed in behalf of the claimant of the Argo charge that the Dumois was solely in fault; and the claims of the legal representatives of Blesine and Hester aver that the

deceased were passengers and not part of the crew of the Argo.

The District Court decreed the Dumois to be solely in fault for the collision, and awarded $11,000 damages for the loss of the Argo, $2500 to Mrs. Blesine, and $5000 to Mrs. Hester. for loss of the deceased seamen.

Oscar M. Springer and your petitioner both appealed from the decree of the District Court to the Court of Appeals, Springer claiming that his damages should be increased, and your petitioner claiming that the Argo was solely in fault for the collision, and that the Dumois should therefore be relieved of all liability. Said appeals were entitled Anders Jakobsen, claimant, vs. Oscar M. Springer *et als.*, and Oscar M. Springer vs. Anders Jakobsen *et als.*, No. 689, on docket of said Court of Appeals.

The Court of Appeals found both vessels in fault, reversed the decree of the District Court, and awarded the claimant of the Argo half damages. As to Blesine and Hester, the Court found that though they had volunteered to make up part of the crew of the Argo for the purpose of complying with the navigation laws, they were not members of the crew, and affirmed the decree in favor of their legal representatives.

Having found both vessels in fault, the Court allowed your petitioner to deduct from the damages awarded Springer one-half the damages your petitioner was condemned to pay for the loss of life.

Being dissatisfied with the decree of the Court of Appeals, the said Oscar M. Springer recently applied for and obtained from your Honors a writ of certiorari upon his complaint that the Court erred (1) in finding the Argo mutually in fault with the Dumois; (2) in allowing the above deduction; (3) in not allowing him $20,000 damages.

And your petitioner shows that the record of said cause has been sent up to this Court in obedience to said writ and filed under the title of Oscar M. Springer, Petitioner, vs. Anders Jakobsen, Claimant, *et als.*, No. 413 of the present October term 1898, to which petitioner begs leave to refer as part of this petition.

Now your petitioner also complains of said decree and shows that the Court of Appeals erred, as follows:

1. In not finding that said collision was caused solely by the fault of the yacht Argo, as established by the evidence; and in not discharging the steamship Albert Dumois from all liability for such collision.

2. In not holding that Blesine and Hester under the uncontradicted evidence were members of the crew of the yacht Argo at the time they were killed, and as such partook of the fault of their vessel.

3. In fixing the value of the yacht Argo at $15,000 when in fact she was not worth more than $9000 at the time of the loss.

Your petitioner desires to have the benefit of these assignments of error, if possible, without the issuance of an additional writ of *certiorari* to bring up the record, which has already been sent up and filed in this Honorable Court, under the writ issued on the petition of the said Oscar M. Springer. But if this can not be done, your petitioner prays that your Honors may be pleased to grant a writ of *certiorari*, directing the Circuit Court of Appeals for the Fifth Judicial Circuit to certify the record to this Court for review as to said errors complained of, to the end that the same may be corrected.

And your petitioner further prays for all such other and further redress and relief as justice may require.

Respectfully submitted,

J. D. ROUSE,
WM. GRANT,
Proctors.

ANDERS JAKOBSEN,
By Wm. Grant, his Proctor.

William Grant being duly sworn says that he is one of the proctors for Anders Jakobsen, the petitioner above named, who is absent from the United States, and that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

WM. GRANT.

Sworn to before me this 6th day of April, 1899.

H. G. DUPRE, *Notary Public.*

BRIEF IN SUPPORT OF THE FOREGOING PETITION.

As the record in this case has already been sent up to this court, under the writ of certiorari granted on the petition of Oscar M. Springer, and has been printed, and is on file under the No. 413 of the present term, we do not consider it necessary to file additional copies with this petition.

We do not propose to discuss the assignment of errors contained in the petition, at length. It is sufficient to say that the material question, as to the fault of the colliding vessels, has been opened by the complaint of Springer, and must be decided by the court; and that it is only fair that petitioner should have the benefit of your Honors' finding on that issue, as well as on the others in the case. And we take it for granted that your Honors will make such order as may be requisite to entitle petitioner to be heard on his complaint, and to enable the court to do full justice between the parties.

As your Honors have already decided in Panama R. R. Co. vs. Napier Shipping Co., 166 U. S. 260, that the writ of *certiorari* brings up the whole record, and that the entire case is before the court for review upon such writ, it would seem to be unnecessary to require petitioner to bring the record up a second time. The court having acquired jurisdiction to hear the whole case under the first writ, we see no good reason why the petitioner may not be heard on his assignment of errors, in the original cause. It is simply a question of practice which this court has plenary power to regulate as it sees fit; and we submit that it is competent for the court to order this petition filed in the original cause, No. 413, and that petitioner may there have the benefit of his assignment of errors.

But if this can not be done, we ask that the usual order may be granted for a writ of *certiorari*.

Respectfully submitted,

J. D. ROUSE,
WM. GRANT,
Proctors.

Syllabus.

THE ALBERT DUMOIS.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Nos. 139, 272. Argued January 31, 1900. — Decided April 9, 1900.

In January, 1897, the navigation of the Mississippi River below New Orleans was governed by the rules and regulations of 1864, (Rev. Stat. sec. 4233) and also by the supervising inspectors' rules for Atlantic and Pacific inland waters.

A steamer ascending the Mississippi within 500 feet of the eastern bank, made both colored lights of a descending steamer, approaching her "end on, or nearly end on." She blew her a signal of two whistles and starboarded her wheel. *Held:* That she was in fault for so doing, and that this was the primary cause for the collision which followed. *Held* also: That the fact the descending steamer seemed to be nearer the eastern bank and that her lights were confused with the lights of other vessels moored to that bank, was not a "special circumstance" within the meaning of Rule 24, rendering a departure from Rule 18 necessary "to avoid immediate danger," since if there were any danger at all, it was not an immediate one, or one which could not have been provided against by easing the engines and slackening speed.

Exceptions to general rules of navigation are admitted with reluctance on the part of courts, and only when an adherence to such rules must almost necessarily result in a collision.

The descending steamer, running at a speed of twenty miles an hour, made the white and red lights of the Dumois, the ascending steamer, upon her port bow, and blew her a signal of one whistle to which the Dumois responded with a signal of two whistles, starboarded her helm, shut in her red and exhibited her green light. *Held:* That the descending steamer, the Argo, in view of her great speed, should at once upon observing the faulty movement of the Dumois, have stopped and reversed, and that her failure to do so was a fault contributing to the collision; and that the damages should be divided.

While a steamer may be so built as to attain the utmost possible speed, she ought also to be provided with such means of stopping or changing her course as are commensurate with her great speed, and the very fact of her being so fast and apparently uncontrollable is additional reason for greater caution in her navigation.

The nineteenth rule, which declares that the vessel which has the other on her own starboard side shall keep out of the way of the other," does not absolve the preferred vessel from the duty of stopping and reversing, in case of a faulty movement on the part of the other vessel.

Statement of the Case.

The representatives of two passengers on the descending steamer who lost their lives, filed a libel against the owner of the ascending steamer for damages, and recovered. *Held:* That as both vessels were in fault, one half of such damages should be deducted from the amount recovered from the Dumois, notwithstanding that the local law gave no lien or privilege upon the vessel itself.

The limited liability act applies to cases of personal injury and death, as well as to those of loss of, or injury to, property.

This was a libel in admiralty filed by Oscar M. Springer, owner of the steamer Argo, a small vessel of forty-eight tons burthen, against the steamship Albert Dumois, to recover damages sustained by a collision between these two vessels in the early morning of January 28, 1897, in the Mississippi River, about eighty miles below the city of New Orleans. An intervening libel was also filed against the Dumois by the crew of the Argo, to recover the value of their clothing lost by the collision.

Upon the seizure of the Dumois, one Anders Jakobsen, of Christiana, Norway, appeared as claimant and owner, and on February 3, 1897, filed a petition for a limitation of liability, in which he also denied any negligence on behalf of the Dumois. Upon the same day, Marie B. Bourgeois de Blesine, mother of Faure de Blesine, a passenger on board the Argo, filed a libel *in personam* against Jakobsen, claiming damages for the death of her son through the negligence of the Dumois. Her suit was thereupon consolidated with that of Springer, and treated as a petition against the stipulation given for the release of the steamer under the proceedings for a limitation of liability. Upon the appraisement of the Albert Dumois at the sum of $30,000, and pending freight at the sum of $1333.75, and the filing of a stipulation to pay these sums into court, an order was issued enjoining further proceedings against the steamship and her owner, and directing all persons claiming damages by reason of the collision to appear before a commissioner and make proof thereof.

On May 5, 1897, Genevieve Keplinger Hester, widow of Harrison P. Hester, a passenger on the Argo, and natural tutrix of his minor child, filed an intervening petition under the limited liability proceedings, claiming damages for the death of her

husband, and alleging that the same was caused solely through the fault of the Dumois.

Thereafter, on December 16, 1897, Springer, as the owner of the Argo, filed a surrender of his vessel and pending charter money to the intervening claimants against the Dumois, and prayed for relief under the limited liability act.

The case of the Argo as set forth in her libel, and answer to the petition of the owner of the Dumois for a limitation of liability, was this: On January 27, 1897, at seven o'clock in the evening, the Argo started from the port of New Orleans on a trip to the jetties at the mouth of the Mississippi River. Upon the following morning, about 12.40 A. M., while proceeding down the middle of the river, at or near Oyster Bayou, the master noticed the white and red lights of a steamer coming up stream about 500 feet from the east bank and immediately gave a signal of one blast of his whistle, signifying that he would turn to starboard and pass on the port side of the approaching steamer, to which the latter responded with two blasts of her whistle, and began crossing the river, shutting out her red and showing her green light. Thereupon the Argo promptly responded with one blast of her whistle, still claiming her right to pass on the port side of the approaching steamer, and put her helm hard-a-port to clear the Dumois, as she had the right to do, and as in the judgment of her master it was best for her to do. Whereupon the Dumois continued her course across the river and blew a danger signal of three blasts of her whistle, but too late to avoid a collision, the Argo striking the Dumois while she was crossing the Argo's bow about eight feet abaft her stem, causing the Argo to fill with water and sink about four minutes thereafter, whereby she was totally lost and two of her passengers were drowned.

The case of the Dumois was that, while proceeding up the Mississippi River, about half-past twelve at night, on a voyage from Port Limon, Costa Rica, to New Orleans, with her full complement of officers and seamen, she had reached a point in the Mississippi River, about eighty miles below the city of New Orleans, and was proceeding up the river as close to the east bank as it was safe for her to do, at a moderate speed of about

nine miles an hour, when her watch discovered the lights of a steamer coming down the river close to the east bank, nearly "head and head," but somewhat upon the starboard bow of the Dumois; that the Dumois, before any signal was given by the approaching steamer, gave two clear and distinct blasts of her steam whistle, indicating that she desired to pass the Argo to the left, starboard to starboard, and at the same time her wheel was put to starboard. In answer, the Argo wrongfully responded to this signal with one blast of her whistle. Thereupon the pilot of the Dumois, fearing that the Argo had misunderstood his signal, immediately repeated it, and at once caused three or more short blasts of her whistle to be given in quick succession, to indicate danger, and at the same time stopped and backed her engines; but the Argo neglected to stop and back, and kept her course and speed until her pilot saw the green or starboard light of the Dumois, when he attempted to pass her by putting his wheel hard-a-port, which brought the Argo in collision with the steamship, striking her at right angles on the starboard side, about ten feet abaft the stem, from which collision the Argo sank and became a total loss.

Upon a hearing upon pleadings and proofs the District Court announced in an oral opinion its conclusion that the collision was caused solely by the fault of the Dumois, and awarded the libellant Springer $11,000 for the loss of the Argo; to Mrs. Hester, $5000; to Mrs. de Blesine, $2500, and to the crew of the Argo the respective sums claimed by them.

From this decree the owner of the Dumois appealed to the Circuit Court of Appeals, assigning in substance as error that the collision was caused through the sole fault of the Argo, and that the amount awarded was excessive. An appeal was also taken by Springer, claiming that the amount awarded him as the value of the Argo was too small; but no appeal was taken by the intervening libellants.

The Circuit Court of Appeals reversed the decree of the District Court, holding that both vessels were in fault for the collision, and that as between the owners of the steamships the damages should be divided. It further increased the allowance of damages to Springer to $15,000, and assessed those sustained

by the Dumois at $185. It was further decreed that Springer recover $7,500 of the Dumois and her bondsmen, subject to a credit of one half of the damages of the Dumois, and one half of the amounts decreed in favor of Mrs. Hester and Mrs. de Blesine, leaving a balance due upon this decree in favor of Springer of $3657.50, for which he was awarded execution. 59 U. S. App. 108. Both parties filed petitions for rehearing, which were denied.

Whereupon both parties applied for and were granted writs of certiorari from this court.

Mr. Richard De Gray and *Mr. Timothy E. Tarsney* for Springer.

Mr. Wilhelmus Mynderse for the Albert Dumois.

Mr. John D. Rouse and *Mr. William Grant* filed a brief on behalf of Jakobsen.

Mr. Geo·ge Denègre, *Mr. J. P. Blair* and *Mr. Walter D. Denègre* filed a brief on behalf of Mrs. Hester.

Mr. Justice Brown, after stating the case as above, delivered the opinion of the court.

This collision occurred in January, 1897, in the Mississippi River about eighty miles below New Orleans, and the steamers in their signals and manoeuvers were governed by the original rules and regulations of the act of 1864, reproduced in Rev. Stat. § 4233. A brief review of the numerous acts subsequent thereto upon the same subject will show that the act of 1864 continued in force upon the Mississippi River at the time of this collision.

1. The original act, now known as Rev. Stat. sec. 4233, was adopted from the British Orders in Council of 1863, was made of general application "in the navigation of vessels of the Navy and of the mercantile marine of the United States," and was supplemented by secs. 4412 and 4413, giving the board of supervising inspectors power to "establish such regulations to be

observed by all steam vessels in passing each other, as they shall from time to time deem necessary for safety."

This code remained in force substantially unaffected by legislation until March 3, 1885, when the "revised international regulations for preventing collisions at sea" were adopted by act of Congress, act of March 3, 1885, c. 354, 23 Stat. 438, and made applicable to "the navigation of all public and private vessels of the United States upon the *high seas* and in all *coast waters* of the United States, *except* such as are otherwise provided for." By section two all laws inconsistent with these rules were repealed, "*except* as to the navigation of such vessels within the *harbors, lakes and inland waters* of the United States." As to such waters, the original code of 1864 remained in force, explained and supplemented by the rules of the supervising inspectors. *The Delaware*, 161 U. S. 459, 463; *The New York*, 175 U. S. 187, 193.

On August 18, 1899, Congress adopted a new code "to be followed by all public and private vessels of the United States upon the *high seas* and in all waters connected therewith, navigable by seagoing vessels," act of August 19, 1890, 26 Stat. 320, article thirtieth of which declared that "nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any *harbor, river* or *inland waters*." The second section repealed all inconsistent laws, and the third section provided that the act should take effect at a time to be fixed by the President by proclamation issued for that purpose. This act was amended by act of May 28, 1894, c. 83, 28 Stat. 82, providing certain lights for small vessels. By another act of June 10, 1896, c. 401, 29 Stat. 381, amending the law with regard to signals, it was declared in the second section that the original act as amended should "take effect at a subsequent time to be fixed by the President by proclamation," although another act approved February 23, 1895, c. 127, 28 Stat. 680, had already provided that it should take effect at a time to be fixed by the President. The President at first declared that the act should take effect March 1, 1895, 28 Stat. 1250, which date was subsequently postponed by another proclamation, 28 Stat. 1259.

By still another proclamation of December 31, 1896, 29 Stat. 885, it was declared that the act of August 19, 1890, as subsequently amended, should take effect July 1, 1897.

Meantime, however, and on February 8, 1895, 28 Stat. 645, Congress passed another code, c. 64, to be "followed in the navigation of all public and private vessels of the United States upon the *Great Lakes* and their *connecting and tributary* waters as far east as Montreal," to take effect March 1, 1895. This act repealed the act of 1864 so far as it applied to the Great Lakes and their connecting waters. All this legislation, however, left the harbors, rivers and other inland waters of the United States unaffected either by the acts of 1885, 1890 or 1895; and to make the intention of Congress more certain in this particular, on February 19, 1895, c. 102, 28 Stat. 672, Congress enacted that the original provisions of sections 4233, 4412 and 4413 of the Revised Statutes, and regulations of the supervising inspectors pursuant thereto, shall be followed on the *harbors*, *rivers* and *inland waters* of the United States, and the provisions of said sections were declared special rules duly made by local authority relative to the navigation of such waters, as provided for in article thirty of the act of August 19, 1890, above quoted. Section four provided that the words "inland waters" should not be held to include the Great Lakes and their connecting and tributary waters as far east as Montreal, and that the act should not, in any respect, affect the act of February 8, 1895.

Finally on June 7, 1897, c. 4, 30 Stat. 96, Congress adopted a set of regulations to be "followed by all vessels navigating all *harbors*, *rivers* and *inland waters* of the United States, except the Great Lakes and their connecting and tributary waters, as far east as Montreal, and the Red River of the North and rivers emptying into the Gulf of Mexico, and their tributaries." This act, as well as that of August 19, 1890, adopting regulations for preventing collisions at sea, was amended February 19, 1900, so far as it related to lights on steam pilot vessels; but as this act of 1897 was approved June 7, to take effect four months thereafter, it is unnecessary to consider to what waters it is applicable. It certainly has no bearing upon this collision, which took place

January 28, 1897, and is cited merely as a part of the history of Congressional action upon the general subject.

The effect of all this legislation was at the time of the collision, and perhaps is still, to leave the rivers emptying into the Gulf of Mexico, subject to the provisions of the original act: Rev. Stat. section 4233.

2. If the legislation of Congress in this connection be somewhat complicated, the result is at least clear that the navigation of the Mississippi was subject to the original rules and regulations of Revised Statutes, § 4233; but the rules of the supervising inspectors, supplementary thereto, are ambiguous, and in one respect quite difficult of interpretation. There are three sets of these rules: 1. Pilot rules for Atlantic and Pacific inland waters; 2. Pilot rules for Western rivers; 3. Pilot rules for the Great Lakes and their connecting tributary waters as far east as Montreal. The third may be left out of consideration in this case.

The pilot rules for Western rivers are entitled "Rules and regulations for the government of pilots of steamers navigating the Red River of the North and rivers whose waters flow into the Gulf of Mexico, and their tributaries." There can be no doubt whatever that these rules apply to the Mississippi and its tributaries, and there could be no doubt that they applied to the river below New Orleans, were it not for Rule XIV, which declares that "the line dividing jurisdiction between the pilot rules on Western rivers and harbors, rivers and inland waters, at New Orleans, shall be the lower limits of the city." This should evidently be construed as if it read: "The line dividing jurisdiction between the pilot rules on Western rivers and *the pilot rules* on harbors, rivers and inland waters at New Orleans shall be the lower limits of the city." This excludes the Mississippi below New Orleans, and indicates that some other rules are applicable.

But on referring to the pilot rules for the Atlantic and Pacific coast inland waters, we find them entitled "Rules and regulations for the government of pilots of steamers navigating *harbors*, *rivers* and *inland waters*, (except the Great Lakes, the Red River of the North, and *rivers emptying into the Gulf of*

Mexico and their tributaries,) when meeting or approaching each other, whether by day or night, and as soon as fully within sound of the steam whistle." Rule IX of these pilot rules contains the same provisions as Rule XIV of the pilot rules for Western rivers, namely, that the line dividing jurisdiction between pilot rules on Western rivers and harbors and inland waters at New Orleans shall be the lower limits of the city. There could be no doubt whatever that the intention was to divide the jurisdiction as to the Mississippi River between the rules applicable to Western rivers, and the rules for Atlantic and Pacific coast inland waters, were it not for the fact that in the entitling of these latter rules rivers emptying into the Gulf of Mexico are excepted. But we are of opinion that these words were intended as a general exception of the waters covered by the pilot rules for Western rivers, and that they were not intended to apply to the Mississippi below New Orleans, in view of the provision of both sets of rules that the pilot rules for Western rivers should cease to be applicable at the lower limits of that city. As New Orleans is practically the head of navigation for foreign trade, it was perfectly reasonable that the supervising inspectors should apply to the lower Mississippi the rules and regulations adopted for the harbors, rivers and inland waters navigated by vessels engaged in foreign trade, while they still left the regulations provided for Western rivers to remain applicable to the Mississippi above New Orleans, where the commerce is almost altogether domestic in its character. The only alternative of this proposition is to hold that the supervising inspectors intended to exempt from their jurisdiction altogether the waters of the Mississippi below New Orleans, some 150 miles in length—a supposition so improbable that it must be rejected at once. We hold, therefore, that the Atlantic and Pacific coast rules apply to these waters.

Such being the rules and regulations applicable to this case, we are remitted to the inquiry how far they were obeyed, and how far disregarded by the vessels concerned in this collision. The night was clear and starlight, the river substantially straight at this point and about half a mile wide, with no obstruction or other special circumstances, under Rule 24, rendering a departure

from the general rules necessary in order to avoid immediate danger. In short, the conditions were all favorable to safety, and the collision could not have occurred without egregious fault on the part of one or both vessels. In endeavoring to locate this fault we are at liberty to consider the movements of each vessel from its own standpoint, and without attempting to reconcile the conflicting statements of the two crews, or to settle disputed questions of fact, to inquire upon the showing made by each whether that vessel was guilty of fault contributing to the collision.

3. As to the Albert Dumois: She was a Norwegian vessel, 210 feet long, drawing 17 feet of water and was bound up the river to New Orleans. While proceeding up the east side of the river at a speed of about nine miles an hour, and from 250 to 500 feet from the east bank, she made directly ahead, and at a probable distance of about half a mile, saw the white and colored lights of the Argo coming down the river. Her theory of the case was, and the entire testimony of her watch showed, that the Argo was approaching her "end on, or nearly end on," within the meaning of Rule 18, which declares that "if two vessels, under steam, are meeting end on or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other." Notwithstanding this, however, the wheel of the Dumois was put to starboard, and a signal of two whistles blown to the Argo, manifesting an intention on the part of the Dumois to sheer out into the river and pass the Argo starboard to starboard. Her excuse for doing this was her own proximity to the east bank and a cluster of white lights belonging to a tug and two luggers inside of the Argo, and in fact moored to the east bank of the river.

We cannot, however, accept this as a "special circumstance" within the meaning of Rule 24 rendering a departure from Rule 18 necessary "to avoid immediate danger," since if there were any danger at all it was not an immediate one, or one which could not have been provided against by easing the engines of the Dumois and slackening her speed. Exceptions to the general rules of navigation are admitted with reluctance on

the part of the courts, and only when an adherence to such rules must almost necessarily result in a collision—such, for instance, as a manifestly wrong manœuver on the part of an approaching vessel. *Belden* v. *Chase*, 150 U. S. 674, 699; *The Britannia*, 153 U. S. 130; *The Test*, 5 Notes of Cases, 276; *The Superior*, 6 Notes of Cases, 607; *The Khedive*, 5 App. Cases, 876; *The Benares*, 9 Prob. Div. 16; Marsden on Collisions, 480. As was said in *The John Buddle*, 5 Notes of Cases, 387: "All rules are framed for the benefit of ships navigating the seas, and, no doubt, circumstances will arise in which it would be perfect folly to attempt to carry into execution every rule, however wisely framed. It is, at the same time, of the greatest possible importance to adhere as closely as possible to established rules, and never to allow a deviation from them unless the circumstances which are alleged to have rendered such a deviation necessary, are most distinctly approved and established; otherwise, vessels would always be in doubt and doing wrong."

The case of *The Concordia*, L. R. 1 Ad. & Ecc. 93, resembles much the instant case in this particular. That was a collision between two steam vessels meeting nearly end on in the river Thames. Defendants alleged that the helm of their vessel was put to starboard to avoid a barge. It was held that the burden of proof that a departure from the rule, which required both steamers to port, was necessary in order to avoid immediate danger, rested upon the defendants, and that in the absence of sufficient evidence to show what became of the barge, the defendants had failed in their proof, and were therefore in fault for the collision, the result of not porting their helm. See also *The Agra*, L. R. 1 P. C. 501.

Manifestly the Argo had a right to rely upon the Dumois pursuing the usual course of putting her helm to port, and her failure to do so was likely to raise a doubt on the part of the Argo as to her own duty, and to bring about the collision it was designed to avoid. If, as insisted by the crew of the Argo, the Dumois was nearer to the east bank than the descending steamer, and exhibited to the latter her white and red lights only, the fault of the Dumois in starboarding and crossing the course of the Argo becomes still more manifest. The fact put

forward by the pilot of the Dumois, that the Argo seemed so close to the luggers that she appeared to be one of them, (although contradicted by the testimony of the libellant that the Argo was in the middle of the river,) was one which undoubtedly called for caution on the part of the Dumois, but it did not involve an immediate danger which justified a departure from the general rule.

4. The Argo, a vessel of forty-eight tons burthen, 101 feet in length and drawing six feet of water, had been chartered by some representatives of the press to meet, at the mouth of the river, a Congressional committee sent to inspect the jetties, and to report the proceedings of the committee. According to her inspection certificate the Argo should have had one pilot, one engineer and a crew of five men, but as they were in great haste to get away, Messrs. Hester, Lindauer and Blesine, newspaper correspondents, all of whom were said to be familiar with the management of water craft, agreed to enroll themselves as part of the crew, and if necessary to lend a hand. Their assistance does not seem to have been of any great value, as they all "turned in" immediately upon coming on board. The Argo left New Orleans about seven o'clock in the evening, having on board a master, who also served as pilot, an engineer, a fireman, one deck hand and a steward, who also served as cook, besides the newspaper correspondents. She took her course down the river at a speed of about twenty miles an hour, and at the time of making the lights of the Dumois was either in the middle of the river or between that and the east bank. There was conflict of evidence upon her exact location, but in the view we have taken of the case it does not become necessary to determine this with accuracy. Her testimony indicates that she made the white and red lights of the Dumois upon her port bow, and blew her a signal of one whistle; that the Dumois responded with a signal of two whistles, starboarded her helm, shut in her red and exhibited her green light, and took her course across the path of the Argo. The Argo again blew her a signal of one whistle, to which the Dumois again responded with two, followed it with a danger signal, and the Argo, still maintaining her great speed, put her wheel hard-a-port, struck

the Dumois upon her starboard bow, and was herself almost immediately sunk by the force of the impact.

The master of the Argo excuses his failure to stop and reverse, which it was his duty to do as soon as he saw the wrong manœuver of the Dumois, by the fact that the starboarding of the Dumois put him in a position in which he was obliged to decide instantly what ought to be done; that, in the exercise of his best judgment, he determined to put his helm hard-a-port, and endeavor to cross the bows of the Dumois; and that, if he made a mistake in this particular, it was an error *in extremis*, for which the Argo is not responsible. The argument is undoubtedly entitled to great weight, but we think the real error was not committed *in extremis*. The theory of the Argo is that she was coming down the middle of the river, and that she made the Dumois on her port bow exhibiting a red light. She was running herself at twenty miles an hour, with the added force of the current. The Dumois was running against the current at the rate of nine miles an hour. That the Dumois must have starboarded and shown her green light some time before the Argo ported, is evident from the place of the collision, which was to the westward of the middle of the river, and, upon the theory of the Argo, was near the westerly bank. As the Dumois was within five hundred feet of the easterly bank when she starboarded,—the river at that point being about 2500 feet wide,—she must have run under her starboard helm about a quarter of a mile before reaching the point of collision. Now, if the Argo had promptly ported as soon as she heard the cross-signal or observed the starboarding of the Dumois, she would inevitably have passed the point of intersection before the Dumois reached it. The fault of the Argo was not in the hard-a-port order when the collision was inevitable, but in failing to stop and reverse at once as soon as she noticed the starboarding of the Dumois. The testimony from the Dumois indicates that she blew her first whistle and starboarded as soon as the Argo's lights were seen, and that if the Argo had starboarded and reversed, the collision would not have occurred. The truth seems to be that the Argo did not port when giving her first signal, but waited for some time, and then put her helm hard-a-port, but too late to be of any avail.

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The testimony indicates that the Argo is chargeable with an infraction of the third rule of the supervising inspectors in failing to stop and reverse after receiving the cross-signals from the Dumois. This rule requires that "if, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and repeated blasts of the steam whistle; and if the vessels shall have approached within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerageway until the proper signals are given, answered and understood, or until the vessels shall have passed each other. Vessels approaching each other from opposite directions are forbidden to use what has become technically known among pilots as 'cross-signals,'—that is, answering one whistle with two, and two whistles with one. In all cases, and under all circumstances, a pilot receiving either of the whistle signals provided in rules, which for any reason he deems injudicious to comply with, instead of answering with a cross-signal, must at once observe the provisions of this rule."

The master also seeks to excuse himself by alleging that the Argo was so constructed that her headway could not have been stopped in time to be of any service. This may be true, and yet the Dumois should not be held responsible for the faulty construction of the Argo in this particular. While a steamer may be so built as to attain the utmost possible speed, she ought also to be provided with such means of stopping or changing her course as are commensurate with her great speed; and the very fact of her being so fast and apparently uncontrollable is an additional reason for the greater caution in her navigation. Her increase of speed should have been obtained with as little increase of risk to other vessels as was possible, and if any precautions in that direction were neglected, it was a fault for which she alone ought to be called upon to respond. This court has repeatedly held the fault, and even the gross fault of one vessel, does not absolve the other from the use of such precautions as good judgment and accomplished seamanship require. *The*

Maria Martin, 12 Wall. 31; *The America*, 92 U. S. 432; *The Lucille*, 15 Wall. 676; *The Sunnyside*, 91 U. S. 208.

But counsel for the Argo also insists that, as the two vessels, from the moment the Argo ported and the Dumois starboarded, were upon crossing courses, the nineteenth rule which declares that "the vessel which has the other on her own starboard side shall keep out of the way of the other," applied, and that the Dumois should have ported, and the Argo was bound, under the case of *The Britannia*, 153 U. S. 130, to keep her course and speed. We are reluctant, however, to say that, where two vessels are meeting end on or nearly end on, under the 18th rule, the faulty movement of starboarding by one absolves the other from the obligation of Rule 21, which requires that "every steam vessel, when approaching another vessel, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse."

In the case of *The Britannia*, the decision of the court that of two crossing steamers the preferred vessel should have kept her course and speed, was put upon the ground that the course of the Britannia, the obligated vessel, was precisely what might have been anticipated, and did not warrant the Beaconsfield, the preferred vessel, in disregarding the injunctions of the twenty-third rule, which required her to keep her course. It was intimated that a different conclusion might have been reached if it had appeared that the Britannia was herself violating a rule of navigation. Now, as it appears from the testimony of the Argo's crew that they not only heard the signal of two whistles from the Dumois, but saw her turn under her starboard wheel, and exhibit her green light when she should have ported, they were at once apprised of the fact that she was violating a rule of navigation, and that prompt action was required to avoid a collision.

The fact that the Argo was short handed and was also running without a proper lookout, though not decisive of a fault contributing to the collision, may be taken into consideration as bearing upon the probabilities of the case, and raising a presumption against her.

We are of opinion that the Dumois was primarily in fault

for this collision, in starboarding instead of porting when she first sighted the Argo; and while the case with respect to the Argo is by no means free from doubt, the majority of the court are also of opinion that the Argo was in fault for failing to observe the twenty-first rule, which required her to stop when risk of collision was involved, as well as the third rule of the supervising inspectors to the same effect.

5. There was no error in fixing the value of the Argo at the sum of $15,000 — an increase of $4000 over the amount fixed by the District Court. The evidence of her builders was that she originally cost $18,000, and that, if she had been kept in good repair, she would have been worth two thirds of that amount at the time of the collision. There was also testimony to the effect that her owner had, at the time of the collision, concluded a sale of one half the Argo for $7500, and that it was to have been delivered and the money paid for this moiety on the day following that upon which she was lost, and upon her return to the city. This is better evidence of her actual value than the conflicting opinions of experts more or less friendly to the owner, who put her value at from $8500 to $30,000. As the District Court and the Circuit Court of Appeals agreed that her value did not exceed $15,000, we should be unwilling to increase that amount unless upon clear proof of inadvertence or mistake.

There was no error in refusing to allow interest upon her valuation. The allowance of interest in admiralty cases is discretionary, and not reviewable in this court except in a very clear case. *The Scotland*, 118 U. S. 507, 518.

6. In the assessment of damages an important question arose as to whether a moiety of the amounts awarded to Mrs. Blesine and Mrs. Hester should be deducted from the amount recoverable by the owners of the Argo. The libel of Mrs. Blesine was filed against Jakobsen as owner of the Dumois, and process of attachment prayed against his goods and chattels, credits and effects. This libel, subsequently consolidated with that of Springer, was treated as a petition against the bond given for the release of the steamer under the proceedings for a limited liability. A similar petition was filed by Mrs. Hester. In the

following December, Springer, the libellant and owner of the Argo, surrendered to the claimants and intervenors his vessel and the freight. These intervening libels, as well as that of the seamen, proceeded as one suit, and in the decree of the Circuit Court of Appeals Mrs. Blesine was awarded $2500 and Mrs. Hester $5000, one half of which was deducted from the amount awarded to Springer.

Admitting that if these intervening libels had been filed against Springer as owner of the Argo, nothing could have been recovered of him by reason of the total loss of the Argo and her freight, and the consequent extinguishment of personal liability on the part of the owner, does it follow that the Dumois is not entitled to deduct from the amount awarded to the Argo; or, in other words, to recover of the Argo one half of the amount payable to these libellants, in view of the fact that the Argo was also in fault? We think this question is practically answered by prior decisions of this court.

The case of *The North Star*, 106 U. S. 17, arose from the mutual fault of two steamers, in which one, the Ella Warley, was totally lost. The court awarded the owners of the Ella Warley so much of their damage as exceeded one half of the aggregate damage sustained by both vessels. The owners of the Warley contended that, as she was a total loss, her owners were not liable at all, and that they were entitled to one half of their damages in full, without deduction for the half of the damage sustained by the North Star, the other vessel. We held, however, that the admiralty rule that where both vessels are in fault they must bear the damage equally, applied, and that the one suffering least should be decreed to pay to the other the amount necessary to make them equal, namely, one half of the difference between the respective losses sustained, and that when this resulting liability of one party to the other has been ascertained, then, and not before, was the proper time to apply the rule of limited responsibility, if the party decreed to pay is entitled to it. "It will enable him to avoid payment *pro tanto* of the balance found against him." "The contrary view," said the court, "is based on the idea that, theoretically, (supposing both vessels in fault,) the owners of one are liable to

the owners of the other for one half of the damage sustained by the latter; and, *vice versa*, that the owners of the latter are liable to those of the former for one half of the damages sustained by her. This, it seems to us, is not a true account of the legal relations of the parties. . . . These authorities conclusively show that according to the general maritime law, in cases of collision occurring by the fault of both parties, the entire damage to both ships is added together in one common mass and equally divided between them, and thereupon arises a liability of one party to pay to the other such sum as is necessary to equalize the burden. This is the rule of mutual liability between the parties."

In *The Chattahoochee*, 173 U. S. 540, which was also a collision occasioned by the mutual fault of a steamer and a schooner, followed by a total loss of the latter, the survivor was permitted to deduct from one half of the damages recovered for the loss of the vessel one half of the value of the cargo of the latter, notwithstanding the total loss of the schooner, and the fact that under the Harter act she would not have been liable to the owner of the cargo for negligence in navigation. We held in that case that the sunken vessel was not entitled to the benefit of any statute tending to lessen its liability to the other vessel, or to an increase of the burden of such other vessel, until the amount of such liability had been fixed upon the principle of an equal division of damages.

The case under consideration is distinguishable from this only in the fact that the intervening libels are for loss of life, for which no lien is given upon the vessel in the absence of a local law to that effect, while in the case of *The Chattahoochee* the libel sought to recover for the loss of the cargo, for which a lien was given by the law maritime upon the vessels in fault.

Assuming for the present that the question of lien is material, we are next to inquire whether such lien is given by the local law of Louisiana. We are cited in this connection to two articles of the Civil Code, the first of which, Art. 2315, as amended in 1884, declares that "every act whatever of man that causes damages to another, obliges him by whose fault it happened to repair it, the right of this action shall survive, in

case of death, in favor of the minor children or widow of the deceased, or either of them, and in default of these, in favor of the surviving father and mother, or either of them, for the space of one year from the death. The survivors above mentioned may also recover the damages sustained by them by the death of the parent, or child, or husband, or wife, as the case may be."

It was held by us in *The Corsair*, 145 U. S. 335, a case arising out of a collision which also took place on the lower Mississippi, that this local law did not give a lien or privilege upon the vessel, and that nothing more was contemplated by it than an ordinary action according to the course of the law as administered in Louisiana.

Our attention is also called by the owners of the Dumois to subdivision 12 of Art. 3237 of the Civil Code, which reads as follows: "Where any loss or damage has been caused to the person or property of any individual by any carelessness, neglect or want of skill in the direction or management of any steamboat, barge, flatboat, water craft or raft, the party injured shall have a privilege to rank after the privileges above specified." No reliance was placed upon this article in the case of *The Corsair*, probably because it was thought to refer only to losses or damages to persons still living, and that an action would lie in favor of the party injured. Certainly, if this article had been supposed to give a remedy for damages occasioned by death, to the representatives of the deceased person, it would never have escaped the attention of the astute counsel who participated in that case.

The question whether "damage done by any ship," jurisdiction over which was given to the High Court of Admiralty in England, included actions brought by the personal representatives of seamen or passengers killed in a collision, has been the subject of many and conflicting judicial opinions in the English courts, a summary of which may be found in *The Corsair*, 145 U. S. 345, and was finally settled against the jurisdiction by the House of Lords in the case of *The Franconia*, 10 App. Cases, 59.

In this country the law is so well settled that by the common

law no civil action lies for an injury resulting in death, that we need only refer to the case of *Insurance Co.* v. *Brame*, 95 U. S. 754, and to the same doctrine applied in admiralty in the case of *The Harrisburg*, 119 U. S. 199. The object of Article 3237 was not to extend the cases in which damages might be recovered to such as resulted in death, but merely to provide that, in cases of damages to person or property, where such damage was occasioned by negligence in the management of any water craft, the party injured should have a privilege or lien upon such craft. We deem it entirely clear that the article was not intended to apply to cases brought by the representatives of a deceased person for damages resulting in death.

But it does not necessarily follow that because there is no lien there can be no deduction of a moiety of these damages from the sum awarded to the Argo. Neither the case of *The North Star* nor that of *The Chattahoochee* is put upon the ground of a lien, since in both cases the vessel against which the deductions were made were totally lost by the collision, and in *The Chattahoochee* the provisions of the Harter act would have exonerated her, even if no total loss had occurred. But no extended discussion of this is necessary, since the question is settled by the case of *Butler* v. *Boston and Savannah Steamship Co.*, 130 U. S. 527, in which it was unanimously held that the limited liability act applied to cases of personal injury and death, as well as to those of loss of, or injury to, property. This was an independent libel *in personam* against the steamship company to recover damages for death, and the company pleaded in defence certain proceedings in a case of limited liability instituted by it and then pending. There was a statute of Massachusetts relied upon, which gave a personal remedy but no lien upon the vessel. The loss occurred within the jurisdiction of that State. The single question presented was whether the limited liability act applied to damages for personal injury and loss of life, and thus deprived those entitled to damages of the right to entertain suit for recovery, provided the ship owner had taken appropriate proceedings to limit his liability. The court, after a careful examination of the law of limited liability of ship owners, had no difficulty

in reaching the conclusion that it covered the case of injuries to persons as well as that of injury to goods and merchandise, and that these proceedings were a good defense to the libel.

It follows that the claims of the intervening libellants, Mrs. Blesine and Mrs. Hester, were valid claims under the limited liability act, notwithstanding that there was no lien under the local law, and that there was no error in deducting a moiety of these claims from the amount awarded Springer.

Upon the whole case we are of opinion that the decree of the Circuit Court of Appeals was right, and it is therefore, as to both cases,

Affirmed.

THE CHIEF JUSTICE and MR. JUSTICE PECKHAM dissented.